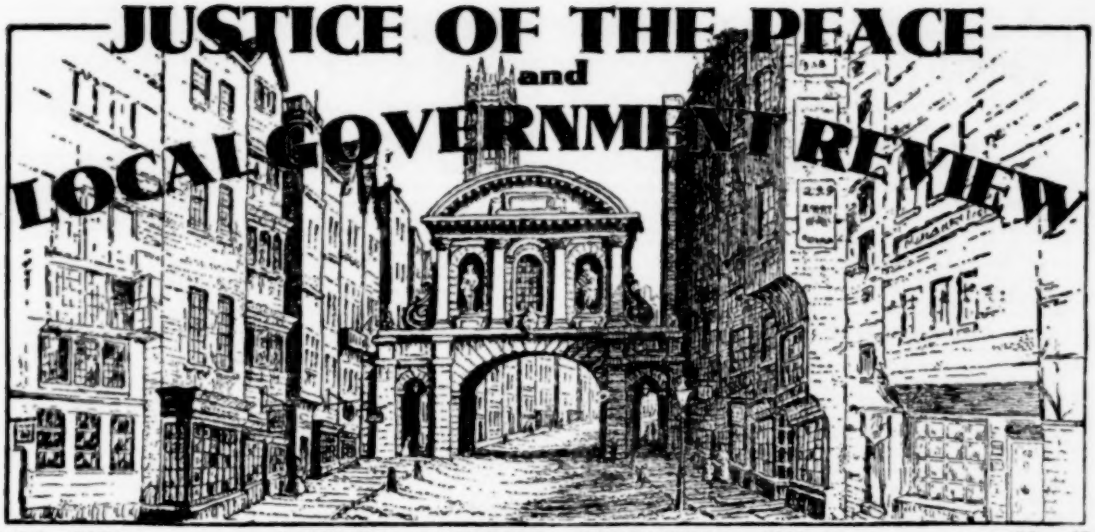
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXV. LONDON: SATURDAY, DECEMBER 1, 1951. No. 48

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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SITUATIONS VACANT

WANTED—Assistant for Clerk to Justices' Office in North Cheshire Town. Reply stating age, experience and salary to Box A. 51, office of this paper.

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ISLE OF ELY COMBINED PROBATION AREA

Appointment of additional Male Probation Officer

APPLICATIONS are invited for the additional appointment of full-time male Probation Officer in the above Area.

The appointment will be subject to the Probation Rules, 1949-50, and the salary will be in accordance with the scale therein specified. The Local Government Superannuation Act, 1937, will apply, and the successful candidate will be required to pass a medical examination.

Applicants should be able to drive a car, in respect of which a travelling allowance would be payable, on appointment, at the rate prescribed in the above-mentioned Rules.

Applications will be considered from persons at present under training, who are likely to complete their courses early in 1952.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials must reach the undersigned not later than December 15, 1951.

R. F. G. THURLOW,
Clerk to the Combined Probation Area Committee.

County Hall,
March, Cambs.
November 15, 1951.

COUNTY BOROUGH OF WEST HAM

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited from Solicitors with experience in Local Government work for the above appointment. Salary Grade A.P.T. X (plus London Weighting).

Terms and conditions of appointment, with forms of application, may be obtained on request; and applications accompanied by by copies of two recent testimonials must be received by first post on December 12 next.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.
November 30, 1951.

COUNTY OF DERBY

Appointment of Whole-time Woman Probation Officer

APPLICATIONS are invited for appointment of a whole-time Woman Probation Officer to serve the Chesterfield Borough and the Alfreton Petty Sessional Divisions of the Derbyshire Combined Probation Area.

The appointment and salary will be subject to the Probation Rules, 1949-50. The officer appointed will be required to provide a motor car (for which an allowance will be paid) and undergo a medical examination.

Forms of application may be obtained from the undersigned and should be completed to reach me not later than December 5, 1951.

D. G. GILMAN,
Clerk to the Derbyshire Combined Area Probation Committee.

County Offices,
Derby.

Amended Advertisement.

COUNTY OF ESSEX

Appointment of Assistant Prosecuting Solicitor

APPLICATIONS are invited from solicitors with experience of advocacy. The person appointed will be required to conduct prosecutions in the Magistrates' Courts of the County on behalf of the Police and the County Council. He must also have ability to draft briefs and instruct counsel at Quarter Sessions and Assizes. His salary will be fixed in accordance with his qualifications and experience but will not exceed £910 a year. Post superannuable. Medical examination necessary. Canvassing forbidden. Applications, stating age, education, qualifications and experience, with typewritten copies of not more than three recent testimonials (which will not be returned) should be sent as soon as possible to the County Clerk, County Hall, Chelmsford.

CITY OF MANCHESTER PROBATION SERVICE

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be not less than twenty-three nor more than forty years of age, except in the case of whole time serving officers. The salary and conditions of service will be in accordance with the Probation Rules, 1949 and 1950.

The successful candidate will be required to pass a medical examination.

Applications, in own handwriting, stating date of birth, present and previous employment, qualifications and experience, together with two recent testimonials, must reach me not later than December 7, 1954.

WALTER LYON,
Secretary to the Probation Committee.

12 Minshull Street,
Manchester, 1.

COUNTY BOROUGH OF DARLINGTON

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor (junior of two) at a salary (according to the date of admission) in accordance with Grade A.P.T. Va-VII of the National Joint Council's Scale of Salaries. Applicants will be required to have experience in conveyancing and advocacy. Previous experience in the office of a local authority not essential. No Council housing accommodation is available. Applications, endorsed "Assistant Solicitor," with the names of two referees, must reach the undersigned before noon on December 17, 1951.

H. HOPKINS,
Town Clerk.

Houndgate,
Darlington

Amended Advertisement

COUNTY BOROUGH OF BIRKENHEAD

Appointment of Legal and Conveyancing Clerk

APPLICATIONS are invited for the position of Legal and Conveyancing Clerk at a salary in accordance with Grade A.P.T. V of the National Scales (£570 to £620 by annual increments).

Applicants must be thoroughly experienced Law Clerks familiar with Court practice and accustomed to carrying out conveyancing matters to completion with only nominal supervision and should have had experience of compulsory purchase. Local Government experience would be an advantage but is not essential.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications, and full details of previous experience, together with copies of three recent testimonials, endorsed "Legal and Conveyancing Clerk" must be received by the undersigned not later than December 15, 1951.

Canvassing, either directly or indirectly, will disqualify.

DONALD P. HEATH,
Town Clerk.

Town Hall,
Birkenhead.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Committal to Assizes

The *Yorkshire Post* reports observations made by the Lord Chief Justice at Leeds Assizes upon committals to assizes of cases which ought to be sent to quarter sessions.

Lord Goddard said that assizes should be kept for really serious cases, and observed :

" This calendar is full of small housebreaking, shopbreaking and larceny cases, which should have gone to the quarter sessions.

" The mere fact that a man, especially a man with a record, may have to wait in custody for some time is not in itself necessarily a reason for sending a case to the assizes.

" A court can surely be trusted to take into account the fact that a man has been kept in custody for some time. If he is granted bail there is still less reason for sending him to the assizes."

Since the coming into operation of s. 14 of the Criminal Justice Act, 1925, which enables justices to commit to a court other than that to which they normally commit cases for trial, " with a view to expediting trial or saving expense " there has been a tendency in some places to commit to assizes in order to insure an early trial, even though a case may be within the jurisdiction of quarter sessions and free of circumstances of exceptional gravity. Judges have from time to time complained of the overloading of assize calendars with quarter sessions cases, and this latest pronouncement by the Lord Chief Justice should remind committing justices of the need for careful consideration before deciding to send a simple quarter sessions case to assizes.

Adoption : Question of Residence

In order to confer jurisdiction upon an English Court to make an adoption order it is necessary that the applicant and the infant should be resident in England, Adoption Act, 1950, s. 2 (5). Residence is a question of fact, but of course there must be evidence to justify a finding of fact, and there is a certain amount of case law on the meaning of residence.

Juvenile courts sometimes have to deal with applications by parties who are temporarily in this country, domiciled here, but usually living abroad in pursuance of some occupation or appointment, only periods of leave being spent in this country. It may be difficult to decide whether or not the court has jurisdiction to make an order.

An important decision on such a case was given by Harman, J., in *Re Adoption Application* No. 52/1951 212 L.T. 268. The applicant was the wife of a colonial civil servant who had had to leave this country to return to duty, leaving his wife here. They wished to adopt an infant and take it abroad with them. Their settled home, it appeared, was likely to be abroad for some years to come, although they had bought a house in this country, and intended to make their permanent home here. They usually stayed with relations during periods of leave.

The learned judge held that " resident " within the meaning of the Act denoted some degree of permanence, and, while it did not necessarily mean that the applicant had his home in this country it meant that he had settled headquarters here. On the facts of the present case the wife was not resident in England and therefore under s. 2 (5) an adoption order could not be made in her favour.

It may be worth pointing out that in some cases of this type the question of taking an infant abroad with a view to adoption may be dealt with under the provisions of s. 39 of the Adoption Act.

A Record of Long Service

Tamworth, in Staffordshire, is one of the boroughs which has lost its separate commission of the peace by reason of the provisions of the Justices of the Peace Act, 1949. It is true that the borough has become a petty sessional division of the county, but the change of status is a landmark in the history of the borough and its justices. It is also an occasion for looking back upon the office of clerk to the borough justices, which has an interesting history of just over 100 years. The borough received its separate commission in 1836, and the first clerk to the justices was Mr. Thomas Argyle, great-grandfather of the last clerk to the borough justices, Mr. D. M. Argyle, who is continuing in office as clerk to the new petty sessional division. The first clerk and his son Edward between them covered the period from 1836 to 1924, in itself a notable achievement. Mr. Edward Argyle, on his retirement in 1924, was succeeded by his nephew Mr. F. H. Argyle who died in 1948 and was succeeded by his son Mr. D. M. Argyle, the present clerk. Thus during the whole period of its existence as a clerkship to borough justices with a separate commission the office has been held by a member of the Argyle family. The clerkship of the adjoining division, the Tamworth county division, has also been held by a member of the family for nearly 100 years.

It is no uncommon thing for son to succeed father in the clerkship, and from time to time we have received particulars of long family service, but we think the instance of Tamworth must come near to being a record.

Probation in the Beacontree Division

Reports of probation officers and probation committees have often recorded appreciation of improved office accommodation. In contrast the report of the Principal Probation Officer for the Beacontree Division of Essex contains out-spoken criticism of the failure of Whitehall to authorize expenditure of public money on what was considered by the probation committee to be a reasonable scheme for much needed improvements. " Apparently, probation officers are expected to work in overcrowded and

insanitary conditions and their committees are to be prevented from doing anything about it." Mr. Dickinson proceeds to contrast this state of affairs with the position in relation to various national and local services for which expensive premises and equipment are acquired.

There is warm appreciation of the time and attention given to probation work by the members of the case committees. The hope is expressed that they feel that the hours they spend in hearing case histories and in reading records and discussing cases are well spent. We have little doubt on this point, for it is only by making these personal contacts with probation officers and their work that justices can learn what probation really means and thus be in a position to exercise sound judgment in making use of it.

Voluntary cases of prison after-care have, on the whole, proved encouraging, but the results of borstal after-care are causing some disquiet. Out of thirty-five cases completed during the year under review, fourteen were recharged while on licence. The report adds: "The results are not out of keeping with the national figures, but one wonders whether such a high failure rate should not be made the subject of a close and searching scrutiny."

Apparently free use is made in the Beacontree Division of the services of probation officers as guardians *ad litem* in adoption proceedings, no fewer than 114 cases having been dealt with during the year. Matrimonial work remains considerable, and efforts at reconciliation between parties referred by the court to probation officers have met with success in many instances.

In a foreword to the report, Sir Herbert Dunnico, chairman of the probation committee, truly observes that the work of the probation department is the concern of every magistrate and should not be restricted to members of the probation committee and the juvenile court panel. He adds that there is still a wide-spread tendency to consider a probation order almost an acquittal and it requires a probation officer of strength and character to impress upon offenders the seriousness of their criminal offence. To this we venture to add that something depends also on the magistrates and what they say when making probation orders.

Stratford Juvenile Court

In his first report as chairman of the juvenile court panel for the Beacontree Division, perhaps better known as that of the Stratford juvenile court, Mr. H. R. Dunnico suggests the necessity for considering the possibility of bringing parents to book where juvenile crime is due to their failure to fulfil their duty.

During the year covered by the report there was a serious increase in offences against property, the number being 733 as against 558 for the previous year. In these cases says Mr. Dunnico, many of the parents show little concern at the damage or loss which may have occurred, and are inclined to regard these serious offences as youthful escapades. Mr. Dunnico thinks that the father of a juvenile offender should more generally be required to attend the court.

More fines have been imposed than formerly and the report emphasizes the desirability of making the fine such as will be a real deterrent. The same applies to compensation ordered to be paid to those who have suffered loss or injury. With this we cordially agree; a substantial sum, to be paid if necessary by instalments, and with supervision pending payment, may be expected to prove a deterrent and disciplinary measure.

It is further urged, and again we agree, that in suitable cases a parent should be ordered to enter into a recognizance for his child's good behaviour, and that in the event of further delinquency the parent should be brought before the court and the recognizance be enforced. To take no steps at all when a recognizance is liable to forfeiture would only make matters worse by fostering the idea that entering into a recognizance is a mere formality. It is constantly being said, and truly, that much of the present disturbing amount of juvenile crime is due to the neglect of parental responsibility. Not all parents whose children get into trouble are to blame, but where blame is clearly due to them it is well that the juvenile court should consider the possibility of dealing with the parent, while never losing sight of the question of the welfare of the child.

A Remarkable Bill

The Income Tax Bill ordered to be printed on November 6 is a remarkable achievement. When it passes into law it will rival the Companies Act, 1948, in length and complexity, and will, it may be hoped, prove equally beneficent in enabling those concerned to discover the provisions which affect them. The Income Tax Act, 1918, was itself a consolidating measure, and there have been subsequent attempts (which proved abortive) to consolidate its provisions with alterations made by Finance Acts in the intervening period. The Bill which is now before Parliament covers 508 pages in the ordinary quarto form, and will consolidate the Act of 1918 with five others which have since affected the structure of the tax. The arrangement, very curious when it is contrasted with the modern use of schedules, of the tax schedules A to E will be retained, with the chapters and general rules within the schedules. There has from time to time been talk of altering this method, but the habit has become inveterate, of referring to schedule A, schedule D, and so forth; those responsible no doubt decided wisely, in retaining this structure. It is to be expected that among the earliest work of the new Parliament will be reconstituting the Joint Committee on Consolidation Bills, so that, despite the bulk of the present Bill and its complex character, it can pass into law before the introduction of the Finance Bill, 1952. It will then be a good deal simpler, for the Chancellor of the Exchequer in explaining his Budget, and for the Inland Revenue when advising him, to indicate whatever changes there may prove to be, in income tax and its allied instruments for raising money.

Word Fumbling

We had something to say at p. 257, *ante*, under the heading "Agenda" upon the standards of written English, especially as perpetrated by public authorities, and our contributor A.L.P. dealt with the topic satirically at p. 669, *ante*. We do not claim competence to compare the depths of English with those reached in other languages, except, to some extent, the language of publications coming into our hands from the United States, in some of which unintelligibility has been raised to a fine art. In his recent talk to the National Book League Mr. Somerset Maugham compared English and French from this point of view. He called attention to one feature which is, indeed, more or less well known, namely that English, from historical causes, is much the richer of these languages in synonyms. With us, almost every idea expressed by noun or verb has a common word and an ornate word to express it. Often the same thing can be said in half a dozen forms. Hence pretentiousness and the prolixity which comes from using alternatives for the same idea. In French, more often if not always, there is one word for one idea, and only one pattern for the sentence. Mr. Maugham quoted "assemble and meet together" from the prayer book of the Church of England, as a doubleton arising from a learned person's writing the more literary word and then explaining it

to common readers. Legal documents, especially conveyances, will furnish innumerable parallels, and if this sort of thing is no longer fashionable it is far from dead. A B.B.C. "news reel" on October 29 spoke of a "hydro-electric plant worked by water power," and did not one of the few living masters of spoken English say on October 26 that his party faced a "difficult and hard task"? We believe that much of the prolix obscurity of official and commercial English arises from the habit of dictation; the employer's fumbling with words helps the process which in his mind, or somewhere, passes for thinking and may also help the shorthand writer to keep up with him—moreover, it matters not to him how many words he uses since he no longer writes them with his own hand. Mr. Maugham went on to a second explanation of the poor quality of so much published English as compared with French, when he said that in French schools persistent training in the use of the French Language was a protracted discipline. Among details of an educational curriculum we are beyond our depth, but it may be that Mr. Maugham, who as a boy was brought up in France, has hit on something here. Fifty years ago dictation was a regular item in teaching the lower and even middle forms of English schools. Writing from dictation trains the pupil's ear, and if it were revived the boy would find (rather than "discover") that "hard" involves less work for the pen than "difficult," and is only one fifth of the length of Mr. Churchill's doubleton. He might then, by the time he came in his turn to dictate to others, have learned to use language for expression rather than concealment of his thought. Anyhow, we said something like this at the foot of p. 257, *ante*, and we present the notion again to our educational readers.

Rag Flock

A circular dated October 22, 1951, from the Ministry of Local Government and Planning calls attention to the main provisions of the Rag and Flock and Other Filling Materials Act, 1951, which came into operation on November 1. Regulations have been made by the Minister for the purposes of s. 9 (records to be kept on registered and licensed premises); s. 15 (right to have samples tested), and s. 34 (standards of cleanliness). The circular gives a brief summary of the purport of each set of regulations. It also urged local authorities to deal promptly with applications for registration or licensing of premises, so as not to have a time lag after November 1. The Act imposes upon local authorities a duty to carry its provisions into execution, and in particular to secure inspection of registered and licensed premises. An unusual provision is that by which an official of one local authority may exercise powers conferred by the Act in the area of another, so long as that other authority consents. The purpose of this is to enable an official who has found dirty material in rag flock or other filling material in his own area to follow it up to its source. There is much to be said for allowing investigations of this kind to be carried out from beginning to end by the same official, and it is to be hoped that the novelty of the idea will not deter local authorities from letting it be tried. The new Act differs from its predecessors, in that virtually all filling materials for bedding and upholstery fall within its scope. Parliament has thought it necessary, for more than forty years, to have legislation dealing with rag flock and the like, but there has always been something experimental about it and, for many years, it was not highly thought of by local authorities, and there was a certain tendency to condemn it as unduly grandmotherly legislation. From one point of view the most interesting feature of the provisions now being brought into force is that the British Standards Institution have produced a specification, which is being used as the basis of the Minister's regulations. This is a method which has been much discussed in other contexts, but has not (we think) been applied so extensively in any field falling directly within the purview of local authorities.

Property of the Casually Dead

In connexion with our two Notes of the Week at p. 629, *ante*, we have been asked whether there is any authority which a local authority can require to accept the custody of personal belongings which come into its custody as an incident of burial. A person falling to be buried by the local authority by reason of s. 50 of the National Assistance Act, 1948, may have had property, such as a watch upon his person, and other property within the district such as clothing, a bank book, etc., of which (it is suggested to us) it ought to be somebody's duty to take charge. We are not here dealing with the case of a person whose house is in the local authority's area (when other considerations will arise) but of such a person as a traveller who dies in a hotel or lodgings, or a resident servant. Often, the clothes, bank book, or the like afford the means of tracing the deceased person's family, but even so somebody has to do the tracing and somebody has to be responsible for the property meanwhile. As we said in our previous Notes, the local authority is not bound to assume this function; if it does so voluntarily it cannot dispose of any belongings, to recoup the balance of its expenses (after deducting the death grant, if any) and, further, if it parted with possession to any person other than the executor or administrator it would be liable to any person later found to be entitled. In cases arising since the Act it has been found that, by taking possession of belongings, the officials of a local authority may involve themselves in a good deal of administrative work and correspondence, either with personal representatives or with the Treasury Solicitor, or in certain cases the Duchy of Lancaster or the Duchy of Cornwall; or, in the case of an alien, the appropriate consulate. Upon becoming involved with one of these authorities, the clerk is likely to find his help invoked in trying to trace other property of the deceased. There is no statutory authority at all, for incurring expense other than burial (or cremation), and the council might find such expense challenged by a ratepayer or the district auditor.

The first thought of the local authority's officials in such a case is not unlikely to be (as that of the outsider will be) why should not the police take over, by analogy with their well recognized practice of taking charge, in charity for the owner, of property lost in streets or similar places? Some police authorities may be willing that their local police stations shall do so, but we can find no statutory authority or common law liability for using the time of police staffs (which means police funds) for such a purpose, and the district auditor might be moved to intervene, as he might if the work had been done, *i.e.*, if the money had been spent, by a local authority. We know, at any rate, of three counties where the question has been raised, and the police authorities have declined to become involved. Similar difficulty did not arise before the Act of 1948, because if any public authority undertook the burial—and be it remembered that in most cases (even though there was a power in a public body) the duty lay upon private persons and not upon the public—that authority was the council of the county or the county borough, exercising a power inherited from the board of guardians who, in relation to the deceased person's property, had powers of retention (with the object of recoupment) which were wide enough to remove difficulty in ordinary cases. When Parliament decided in 1948 that burial (of the body of a person which nobody else was prepared to bury) was to be regarded in future as a sanitary matter, not a matter of public assistance, nobody seems to have thought about this problem of the custody of property. Perhaps those responsible were thinking still of the "pauper whom nobody owns," but

even he did not, of necessity, himself own nothing—and portable property, which he had in his pockets or otherwise about him at the time of death, particularly of a sudden death, may be of appreciable value. The problem seems to be another of those created by legislation designed for some benevolent purpose (in this case, the removal of an imaginary stigma), but not thought out properly with its implications. The local government associations might be moved to take the matter up.

SPEED LIMIT OF GOODS VEHICLES
THE MOTOR VEHICLES (VARIATION OF SPEED LIMIT) REGULATIONS, 1950

By the Regulations referred to in the title of this article a change was made in para 2 (1) (*a*) of the first schedule to the Road Traffic Act, 1930, as substituted by sch. 1 to the 1934 Act. The paragraph now reads:

(1) When not drawing a trailer (*a*) motor cars and motor cycles in the case which the first condition as to tyres is satisfied and which are authorized to be used under a licence granted under Part I of the Road and Rail Traffic Act, 1933, or which but for the provisions of subs. (7) of s. 1 of the said Act or s. 59 of the Transport Act, 1947, or in the case of a vehicle in the public service of the Crown but for such service, would require such a licence.

The appropriate speed against this paragraph is thirty miles per hour. The general heading under which the paragraph comes is that of "goods vehicles." It follows that motor cars and motor cycles with pneumatic tyres which do not come within (*a*) are exempt from any speed limit. "Motor cars" covers vehicles not exceeding three tons in weight, unladen.

We turn now to the Road and Rail Traffic Act, 1933, s. 1, and we find that no person shall use a goods vehicle on a road for the carriage of goods (*a*) for hire or reward or (*b*) for or in connexion with any trade or business carried on by him except under a licence. "Goods vehicle" is defined as a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted; and "licence" means a licence granted under Part I of the Act.

Part I goes on to specify the different kinds of licences which may be granted and the uses appropriate to each kind. In s. 8 it is enacted "It shall be a condition of every licence (*a*) that the authorized vehicles are maintained in a fit and serviceable condition; (*b*) that any provisions (whether contained in any statute or in any statutory rules and orders) with respect to limits of speed . . . are complied with in relation to authorized vehicles . . . ." The rest of the subsection is not material for our purpose. "Authorized vehicle" means in relation to any licence a vehicle authorized to be used thereunder.

Section 9 enacts that (1) subject to the provisions of this section, any person who fails to comply with any condition of a licence held by him shall be guilty of an offence under this Part of this Act and (2) notwithstanding that a vehicle is an authorized vehicle, the conditions of the licence shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a licence.

Now let us return to para. 2 (1) (*a*) of the first schedule to the 1930 Act and consider, in particular, the phrase "motor cars which are authorized to be used under a licence granted under Part I of the Road and Rail Traffic Act, 1933." If this is to be construed absolutely literally it appears to mean that a vehicle which is so authorized is subject to the thirty miles limit and that one which is not so authorized, even if it ought to be, is not within the limit. We do not think that this can be the correct construction, because it would mean that although a person who failed to apply for and obtain the appropriate licence would be liable to penalties under the 1933 Act if he used the vehicle in contravention of Part I of that Act he would be free from any speed limit, his vehicle not being authorized to be used under a licence granted under the said Part I.

If we are right in this then the phrase we are particularly considering must, we submit, be taken to mean "vehicle for which the authority of a licence under Part I of the 1933 Act is required," and that if a person uses a goods vehicle for a purpose for which the authority of a licence under the 1933 Act is required he must comply with the thirty miles per hour speed limit even if he has failed to get the proper licence.

This brings us to our next point. What is the effect, if any, of s. 9 (2) of the 1933 Act on the speed limit of the vehicles we are discussing? The inclusion in the licence of a condition that the appropriate provision as to speed limits shall be complied with by authorized vehicles means that failure so to comply renders the offender liable to prosecution under s. 9 (1) of the 1933 Act. He is also liable, on precisely the same facts, under s. 10 (1) of the 1930 Act, but clearly could not be prosecuted under both sections on the same facts. If, however, the vehicle, although an authorized one, is being used for any purpose for which it may lawfully be used without the authority of a licence the conditions of the licence are not to apply, and no offence is committed under s. 9 (1) of the 1933 Act if such a vehicle, so used, is driven at over thirty miles per hour. Does the offence under s. 10 (1) of the 1930 Act remain?

We agree that it can be argued that it does because para. 2 (1) (*a*) is "which are authorized to be used under a licence" and does not continue "and while being so used." But as we have pointed out we do not think that the phrase in question can, without producing an absurdity, be interpreted strictly literally and we submit, therefore, that its full meaning is that it restricts only vehicles which are used for a purpose for which the authority of a licence under Part I of the 1933 Act is required, *i.e.*, that "authorized to be used under a licence" equals "used in a manner which is lawful only under the authority of a licence."

If we are right in this then, by s. 9 (2) of the 1933 Act, a vehicle which is an authorized one but which is used for a purpose for which no licence is required is, while so used, to be treated as if it is not an authorized vehicle, and none of the restrictions attaching to authorized vehicles is for the time being to apply to it. This, we think, makes sense and we hope it is also sound law. We do not think it introduces any special difficulties in enforcing the law other than those already introduced by s. 9 (2) which makes authorized vehicles subject to different conditions according as to whether their use at a particular time is or is not governed by the 1933 Act. We see no reason why those different conditions should not include a difference as to the authorized speed at which they may be driven.

We have not overlooked the recent case of *Manning* v. *Hammond* [1951] 2 All E.R. 815, but we have not considered it here because the vehicle in that case was not authorized to be used under any licence under the 1933 Act, and the effect of s. 9 (2) of that Act was not considered.

CALLING OF WITNESSES

[CONTRIBUTED]

A point of interest was raised in a case in the Wealdstone Petty Sessional Court in the Gore Division of Middlesex (*Harrow Observer and Gazette*, November 9, 1950) with regard to the duty of the prosecution to call before the examining justices all the witnesses who might be called for the prosecution at the hearing of the charge if the accused were to be committed for trial.

According to the report the accused had elected to go for trial on a charge of driving a motor car while under the influence of drink, and the prosecution called three witnesses, but they declined at the request of the solicitor for the defence to call a certain police officer who was to corroborate the evidence of the officer who had made the arrest. In his address to the justices, the defending solicitor stated that it was all important and only in accordance with the principles of justice that a defendant should hear all the evidence against him, and that he should have the opportunity of cross-examination at the magistrates' court ; that the accused had been arrested by two police officers, and that they had had the benefit of the evidence of one, but that for some reason the prosecution would not call the other officer. He then went on to say : " I say it would prejudice the defendant at his trial and be a grave injustice if the officer were not called here. It is a grave injustice that a serious matter of this kind against a man of good character should be dealt with in this way. I should have thought defendant was entitled to justice and a fair hearing here." In reply counsel for the prosecution stated that it was only the duty of the prosecution to provide *prima facie* evidence, and that notice of additional evidence would be served on the defending solicitor, and that there was no underhand reason why the police officer in question was not being called ; to this the defending solicitor stated that many cases at Middlesex Sessions were decided on cross-examination in the lower court, and he requested the clerk of the court to record his protest. The Chairman then stated that the magistrates found that there was a case to answer, and the accused was committed for trial.

In view of this protest it is proposed shortly to review the position with regard to the calling of witnesses by the prosecution, (i) at the court of Summary Jurisdiction, in a case in which either the accused has elected to go for trial under s. 17 of the Summary Jurisdiction Act, 1879, or is entitled to object to being tried summarily, *e.g.*, under s. 9 of Conspiracy and Protection of Property Act, 1875, or the accused is charged with an indictable offence and not an offence punishable on summary conviction, and (ii) at the hearing where such a person has been committed for trial at assizes or quarter sessions.

(i) *At the Court of Summary Jurisdiction*

In order to see what witnesses must be called for the prosecution, it is necessary to see what is the duty of the justices when considering whether the accused shall be discharged or committed for trial, and this duty is to be found in s. 25 of the Indictable Offences Act, 1848, as amended by s. 12 (8) of the Criminal Justice Act, 1925.

The relevant words of s. 25 are as follows : " . . . when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry ; but if in the opinion of such justice or justices such evidence is sufficient to put the accused upon his trial for an indictable offence, or if the evidence given raises a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, . . . commit him to the common gaol . . . ", and by s. 12 (8) of the Act of 1925, the examining justices shall, before determining whether they will or will not commit an accused person for trial, take into consideration his statement or any such evidence as is given in pursuance of this section by him or by his witnesses.

This section fell to be considered in *R.* v. *Hertfordshire Justices, ex parte Larsen* [1926] 1 K.B. 191 where Lord Hewart, C.J., in his judgment holding that, where the justices in considering such a question as to the committal for trial or discharge of an accused person for an indictable offence, were equally divided in opinion, they had power to adjourn the inquiry for a re-hearing either before themselves or before a differently constituted court, discharged a rule *nisi* for a *mandamus* directed to the justices ordering them to discharge the applicant from custody, saying : " I am clearly of opinion that the rule ought to be discharged. The argument in support of the rule appears at the outset to be based on a misreading of s. 25 of the Act of 1848. That section does indeed lay down the condition subject to which it is the duty of justices forthwith to order that an accused person be discharged, but it is important to observe what the terms of that condition are." Then after reading the section, the Chief Justice goes on : " In other words the duty in such circumstances to discharge arises when, and only when, the justices have reached an actual opinion that the evidence is not sufficient."

It is clear, therefore, that in a case where the justices are not sitting as a court of summary jurisdiction to decide whether or not a defendant is to be convicted, but are sitting to determine under the Act of 1848 whether or not an accused person shall be committed so that he may be tried on indictment, the onus which lies upon the prosecution is only to adduce such evidence as, in the opinion of the justices, is sufficient to put the accused person upon his trial or raises a strong or probable presumption of his guilt. If, therefore, the evidence produced before the justices is of such a convincing character, then it is conceived that the prosecution are not bound to call an additional witness merely to enable the defence at that stage in a case which, *ex hypothesi*, cannot be tried in that court to cross-examine him, such cross-examination not being open to the defence on the facts in the case of the witness or witnesses who are in fact called by the prosecution. It is, of course, possible to conceive of a case where the defence would appear to be at a disadvantage at not having the opportunity of cross-examining at the magistrates' court a witness for the prosecution, and of having his answers recorded on the depositions. To take a purely hypothetical case, by way of example, in a charge of driving under the influence of drink ; supposing that the arrest of the accused is made by two police officers, A and B, but that before the justices only A is called, and no subject for cross-examination arises on his evidence. The accused has, however, evidence that B subsequent to the arrest was overheard to express the opinion that the accused at the time of his arrest was not as drunk as he (B) expected to have found him, but if B is not called these remarks cannot be put to him in cross-examination, and his answer to such an allegation cannot, of course, be entered on the depositions. It is submitted, however, that the prosecution in

such a case are under no duty under the terms of s. 25 to produce B where their evidence in support of their case to commit the accused for trial is sufficiently established by the evidence of A together with any other witness whom they choose to call, and that the protest on the part of the defence complaining of the absence of B in the witness-box is not in law well founded, however unfair on the face of it the absence of B would appear to be.

(ii) *At the hearing at Assizes or Quarter Sessions*

It is now proposed to see what is the present practice with regard to the duty of the prosecution to call at the trial all the witnesses whom they have, and in this connexion the subject will be considered in regard to those witnesses whose depositions have been taken, and whose names appear on the back of the indictment.

Witnesses on the back of the indictment

In earlier times there seemed to be a difference of opinion as to the practice to be followed; thus, in *R.* v. *Simmonds* (1823) 1 C. & P. 84 Hullock, B., stated that: "Though the counsel for the prosecution is not *bound* to call every witness, whose name is on the back of the indictment, it is *usual* for him to do so . . . ," and in *R.* v. *Vincent* (1839) 9 C. & P. 91, a charge of conspiracy and attending an unlawful assembly, Alderson, B., says, at p. 106: "The calling of a witness whose name is on the back of the indictment, for the other side to cross-examine him, is by no means of course. It is discretionary even in felony, but it is a discretion always exercised, and I think it may well be exercised in misdemeanour."

On the other hand, in *R.* v. *Beezley* (1830) 4 C. & P. 220, Littledale, J., directed that counsel for the prosecution ought to call all the witnesses on the back of the indictment to give the prisoner's counsel an opportunity of cross-examination, and this ruling was followed in *R.* v. *Bodle* (1833) 6 C. & P. 186, the trial of the prisoner for the murder of his grandfather where the prosecution were directed to call the prisoner's father for the purpose of cross-examination, and in *R.* v. *John Bull* (1839) 9 C. & P. 22, Vaughan, J., says: "It is the proper course to put the witness into the box. I think that every witness ought to be examined. In cases of this kind counsel ought not to keep back a witness, because his evidence may weaken the case for the prosecution. Our only object here is to discover the truth."

Where, however, such a witness was so called, it appeared that counsel for the prosecution was entitled to re-examine him: *R.* v. *Harris* (1836) 7 C. & P. 581, and in *Beezley's* case above it was held that such an examination was strictly a re-examination, and that no questions could be asked which did not arise out of the cross-examination, while in *Bodle's* case above the prosecution were not allowed in such re-examination to call witnesses to contradict the prisoner's father as to statements made by him in cross-examination by the prisoner.

Modern Practice in 1847, however, in *R.* v. *Woodhead* (1847) 2 C. & K. 520, Alderson, B., gave a ruling which seems to be in accordance with modern practice on this point. There the learned Baron says this to counsel for the prosecution: "You are aware, I presume, of the rule which the judges have lately laid down, that a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment. The witnesses, however, should be here because the prisoner might otherwise be misled; he might, from their names being on the bill, have relied on your bringing them here, and have neglected to bring them himself. You ought, therefore, to have them in court, but they are to be called by the party who wants their evidence. This is the only sensible rule," and he then went on to state that, if the witnesses were so called by the defence, the person calling them makes them his own witnesses.

Later, in *R.* v. *Cassidy* (1858) 1 F. & F. 79, Parke, B., stated the practice thus: "... that the Counsel for the prosecution should call what witnesses he thought proper, and that, by having had certain witnesses examined before the grand jury whose names were on the back of the indictment, he only impliedly undertook to have them in Court for the prisoner to examine them, as his witnesses; for the prisoner, on seeing the names there, might have abstained from subpoenaing them. He would, therefore, follow the course said to have been pursued by Campbell, C.J., ... who ruled that the prosecutor was not *bound* to call such a witness, and that if the prisoner did so the witness should be considered as his own," and Cresswell, J., who had been consulted by Parke, B., agreed with this view. (*See* also *R.* v. *Thompson* (1876) 13 Cox C. C. 181, although in *R.* v. *Barley* (1847) 2 Cox C. C. 191 Pollock, C.B., after consulting Coleridge, J., did not follow the ruling of Alderson, B.)

The above ruling in *Woodhead's* case was quoted with approval by Lord Thankerton in giving the judgment of the Privy Council in *Adel Muhammed el Dahbah* v. *Attorney-General of Palestine* [1944] 2 All E.R. 139, rejecting the contention (*inter alia*) of the appellant that the accused had a right to have the witnesses, whose names were upon the information, but were not called to give evidence for the prosecution, tendered by the Crown for cross-examination by the defence, as was asked for by counsel for the defence at the close of the case for the prosecution. In the court of First Instance the Chief Justice had ruled that there was no obligation on the prosecution to call them, but on appeal from his decision the Court of Criminal Appeal in Palestine, while holding that the strict position in law was that it was not necessary legally for the prosecution to put forward these witnesses, and that they could not say that the Chief Justice erred in point of law, went on to point out that, in their opinion, the better practice was that the witnesses should be so tendered at the close of the case for the prosecution for the purpose of cross-examination by the defence if they so wished, and the court stated that they desired to lay down a rule of practice that in future this practice of tendering witnesses should be generally followed in all courts.

Lord Thankerton, however, while agreeing that there was no obligation on the prosecution to tender the witnesses, doubted whether the rule of practice as expressed by the Court of Criminal Appeal in Palestine sufficiently recognized that the prosecutor had a discretion as to what witnesses should be called for the prosecution, and that the court would not interfere with the exercise of that discretion, unless, perhaps, it could be shown that the prosecutor has been influenced by some oblique motive. In expressing this view the learned Law Lord, after quoting the passages from the judgments of Alderson, B., and Parke, B., set out above, says: "It is consistent with the discretion of counsel for the prosecutor, which is thus recognized, that it should be a general practice of prosecuting counsel, if they find no sufficient reason to the contrary, to tender such witnesses for cross-examination by the defence; and this practice has probably become even more general in recent years, and rightly so—but it remains a matter for the discretion of the prosecutor." He then referred to the case of *R.* v. *Nicholson* at the Nottingham Assizes in 1937 (unreported, but referred to in *Archbold on Criminal Pleading* 31st edn., p. 470) as showing that the court had not superseded the prosecutor's discretion where Hawke, J., declined to force the prosecution to call a witness whom they regarded as unnecessary, holding that their duty was limited to giving the defence the whole of the information in their possession with regard to available witnesses in case the defence should want to use it; he also commented upon an interlocutory observation by Lord Hewart, C.J., in *R.* v. *Harris* [1927] 2 K.B. 587,

at p. 590, to the effect that, in criminal cases the prosecution is bound to call all the material witnesses before the court, even though they give inconsistent accounts, in order that the whole of the facts may be before the jury, saying that in their Lordships' view Lord Hewart could not have intended to negative the long established right of the prosecutor to exercise his discretion to determine who the material witnesses are. (*See*, as to the corresponding practice in the Courts of the Irish Free State, *The People* (*Attorney-General*) v. *Kerins* (1945) Ir. R. 339, at p. 346.)

Finally, the Court of Criminal Appeal in this country in *R.* v. *Bryant and Dickson* [1946] 31 Cr. App. R. 146 had to consider the position where the prosecution have taken a statement from a person who can give material evidence, but decide not to call him as a witness, and it was held that they are in such a case under a duty to make that person available as a witness for the defence, but that they are not under the further duty of supplying the defence with a copy of the statement which they have taken. In giving the judgment of the court, Lord Goddard, C.J., says this as regards the duty of the prosecution in connexion with the witness there in question (one Campbell) from whom a statement had been taken by them: "But it is said that it was the duty of the prosecution to put that statement at the disposal of the defence. In the opinion of the court, the duty of the prosecution in such a case is to make available to the defence a witness whom the prosecution know can, if he is called, give material evidence . . . In the opinion of the court it is quite wrong to say that it was the duty of the prosecution in these circumstances, having made Campbell available to the defence as a witness if they wished to call him, to go further and produce the statement which he had made." The learned Chief Justice then referred to certain observations of the Common Serjeant on the failure of either the prosecution or the defence to call Campbell, to the effect that it was, perhaps, not for him to express any view as to whether the prosecution should have called him; or the defence should have called him; that he should have been called he had no doubt, by somebody, saying: "It would have been better to say: 'The prosecution very likely for good reasons did not call him, and that left the defence to call him or not as they chose.' In a criminal case there is no obligation on the defence to call any witness, though the failure to call a particular witness may be a matter the jury will take into account."

The present practice, therefore, it is submitted is that the prosecution have a discretion to determine who are the material witnesses in a particular case, but that if they are of opinion that a particular witness is not material, they are under no duty to call him for the purpose of his being cross-examined by the defence; they are, however, under the duty of making that person available as a witness for the defence, but they are under no duty of supplying the defence with a copy of any statement which they have taken from him. As regards, however, the discretion on the part of the counsel for the prisoner to call such a witness, it may be well to bear in mind what is stated by the reporter in a note to the report of *Simmonds* case above at p. 85, that in general he would be very unwise to risk, as *his* witness, any man who has ever been thought of as a witness in support of the prosecution, while in the last case of *Bryant and Dickson*, Lord Goddard, referring to the failure of the defence to call Campbell, said that no doubt counsel for the defence would not have been so unwise as to call him without having a statement from him, but that, if the defence did not choose to take a statement and find out what he was prepared to say, that was not a matter with which the prosecution were concerned.

It may also be noted that in *Thompson's* case above, a case of wife murder, the defence did not call a witness, whom the prosecution did not propose to call for the purpose of cross-examination, to whom a statement favourable to the defence had been made by the deceased, upon its being pointed out by the judge that by so doing a previous statement made by her to another witness less favourable to the accused might be let in by way of rebutting evidence, and neither witness was in fact called.

M.H.L.

COST OF LITIGATION

At the end of our note at p. 529, *ante*, upon *Moodie* v. *Hosegood* [1951] 2 All E.R. 582 we remarked upon the costs which the successful tenant had presumably paid out, with the risk of having to find a much bigger sum if she had ultimately failed, in settling a point of law upon which, according to the House of Lords, the greater number of members in the differently constituted Courts of Appeal dealing with the point had previously gone wrong. We indicated the peculiarity (not to apply a harsher word) of the judicial system by which doubts, created it may be by a legislative ambiguity, or spun in the first place by the ingenuity of lawyers, can only be set at rest at the cost of their own or other people's clients. There may be no solution for this hardship other than paying from public funds the costs of determining the true meaning of a statute; this we suggested at p. 529 ought to have been possible in Mrs. Moodie's case, but the expense of discovering the law is an expense which not even the welfare state has yet considered it possible to undertake, save in a limited range of cases, notably those involving the Revenue Departments. A hardship of the same order, to a woman litigant who may or may not have been able to afford it, was involved in another House of Lords decision of about the same date, that in *Bolton* v. *Stone* (1951) 1 T.L.R. 977. Here, however, the protracted and costly litigation did not arise from any defect in or alleged doubt upon the language of a statute. The issue arose entirely at common law, and there was not much doubt about the legal principle involved. This was, shortly stated, that where a person is doing something potentially dangerous to others, and another person is in fact injured, that other person can claim to be compensated unless the person who causes the injury can show that he took due precautions. The plaintiff when lawfully on a public road was struck on the head by a cricket ball and injured. Her claim failed in the court of first instance, but the Court of Appeal by a majority held the defendant cricket club to have been negligent, in not taking reasonable care to avoid the accident. The argument thus turned upon what is "reasonable," and this depended partly upon the position of the pitch upon the field. The facts of topography not being in doubt, Singleton, L.J., considered that a sufficient margin of safety for persons on the road would have been secured if the pitch had been some seven yards further from the road—had this been so Miss Stone at any rate would not have been injured, although a powerful batsman might sooner or later have achieved the feat of injuring some other passer-by on the same road. Rightly or wrongly, the club obtained leave to take the matter to the House of Lords, which unanimously allowed their appeal, but with marked divergence in the reasons. We thus have a total of eight judges in three different courts, delivering opinions upon the application of an agreed principle

of law to facts which were undisputed, the dispute being whether on those facts the defendants had taken adequate care for safeguarding persons in the position of the plaintiff. It has been estimated, in the lay press including the *Economist*, that Miss Stone's costs will exceed £3,000. Her advisers were evidently justified in allowing her to take her claim to the Court of Appeal, since she won there by a majority; they may well have hoped, since no question of pure law was involved, that leave would be refused to the club to take her to the Lords. It might be going too far in such a case to say that, even in these days, the costs of both parties ought to be paid from public funds—the suggestion we have thrown out for consideration in cases where a protracted fight takes place about the meaning of a statute. The only suggestion we can make in regard to litigation turning upon the discovery of facts or involving (as here) forming an opinion about facts, is that it should be limited to the court of trial. A grievance would no doubt be felt in many cases by the unsuccessful party, if he were debarred from going further, but this would be offset by the reflection that (as the law and practice of our courts stand today) three hearings may be involved before finality is reached. Thus unless a litigant is very rich, or so poor that he can throw the costs on someone else, justice sought by orthodox English methods is a luxury beyond the reach of the ordinary man. In the article by Mr. Megarry, to which we have referred in an earlier Note, arising out of rent restrictions cases, he reminds us that until recently decisions of the county court would have gone to the Divisional Court instead of direct to the Court of Appeal, and thus there might, over a sum which *ex hypothesi* is small, have been litigation in four stages. While one must recognize the truth of his remark that a judgment by the county court is often based on insufficient argument, and that it is only when a case reaches the Court of Appeal that it is properly developed on both sides, we feel bound to say that his remedy (of going back to letting it be developed in the Divisional Court, with a view to having the case fully prepared for the Court of Appeal to pronounce upon in course of time) seems to us to be worse than the disease.

RATING AND FINANCIAL STATISTICS

POUNDS, POUNDAGES AND PEOPLE

The upward movement of local rates is measured in various ways in the statement of rates and rateable values in England and Wales for the year 1950-51, compiled by the Ministry of Local Government and Planning. During 1950-51, the aggregate produce of rates received by rating authorities was approximately £293 million, which was £10 million more than in 1949-50, and compares with £269 million in 1948-49 when a number of administrative and financial changes came into operation. In 1947-48, before those changes, including a new system of "block" grants under the Local Government Act, 1948, a revised basis of Exchequer grants towards educational expenditure, and the transfer of hospitals to the national health service, the aggregate amount of rates received by rating authorities was £282 million. The increase of £24 million since 1948-49 is remarkably moderate in comparison with some public expenditures other than local government. Cover for some development of local public services, in addition to rising prices, in the moderate increase of £24 million strengthens a view that taxation and benefits are close to equation when close control of expenditure, as by a local authority, derives from close relationship of taxpayers and electors, as in a local rating area.

Differing circumstances are reflected in deviations of averages for various classes of areas from averages for England and Wales as a whole. Thus, an average rate of 18*s.* 0*d.* in the £ in England and Wales in 1950-51 was above that of 16*s.* 6*d.* for London but below the average of 19*s.* 10*d.* for Wales, largely due to differences in the nature of rateable hereditaments and partly to differences in annual values of such as might be comparable. Differences of an opposite import, so far as comparison is valid, are seen in the amount of rates estimated to be collected per head of population; in England and Wales the average was £6 11*s.*, in London (alongside a lower poundage) £13 6*s.*, and in Wales (alongside a higher poundage) £4 11*s.* Other comparisons with the average of 18*s.* in the £ for England and Wales are an average of 18*s.* 2*d.* in administrative counties outside London, 18*s.* 8*d.* in county boroughs, 18*s.* 6*d.* in non-county boroughs and urban districts, and 17*s.* 1*d.* in rural districts. The principal value of these average poundages appears to be in the detection of different trends over a period of years as the forerunner of investigation into the validity of divergences and possible need for re-alignment.

Economic equity and different levels of expenditure do not entirely explain disparities in the average rate in the £ and the amount of rates estimated to be collected per head of population in administrative countries. In Cambridge, for instance, an average poundage of 22*s.* 5*d.* in 1950-51 is equivalent to about £6 9*s.* per head of population, while in Durham 16*s.* 10*d.* in the £ raises about £3 7*s.* per head; sixteen *per cent.* of expenditure is met from Exchequer Equalization Grant in Cambridge and forty-six *per cent.* in Durham. Then look at Stafford and West Sussex. In Stafford, where forty-five *per cent.* of expenditure is met from Exchequer Equalization Grant, an average rate of 17*s.* 2*d.* in the £ is equivalent to £3 10*s.* per head, but in West Sussex, where no Exchequer Equalization Grant is received, an average rate of 16*s.* 7*d.* is accompanied by an equivalent of £8 1*s.* per head. Fairly clearly in the case of Stafford and West Sussex, the difference in burdens borne locally (£3 10*s.* and £8 1*s.* per head) originate in different levels of rateable value (£4 7*s.* and £10 per head), which qualify Stafford for a forty-five *per cent.* grant and disqualify West Sussex from any. Those levels of rateable value largely reflect pre-war differences of economic circumstances of many, though not all, of the population in the respective counties. Since the war such differences have largely disappeared to the benefit of Stafford, illustrating alterations of a similar character in varying degrees between other counties, and pointing strongly towards a need for upward revaluation in some counties so that the Local Government Act, 1948, Part I, may operate equitably, or a need for revision of those provisions of the Act of 1948.

COUNTY OF GLAMORGAN

General statistics given with the abstract of accounts for 1950-51 prepared by the county treasurer (Mr. W. H. G. Cocks, F.I.M.T.A., F.S.A.A.) probably attract more attention than the accounts. This is due to several factors. The statistics give a quicker, and in some respects clearer, view of the sources of income, the nature and extent of the services financed from the income, comparisons with earlier years, an occasional peep into the future, and detailed costs of weekly maintenance in educational, welfare, and child care establishments, and in remand homes and approved schools. At the same time, the accounts deserve attention for the insight given into further details of

county administration, assisted by clarity of presentation, and a narrative preface to each section explaining the origin and operation of the accounts in it.

Population in Glamorgan in 1950-51 was 737,890, an increase of 27,730 since 1946-47, equal to a density of 1.57 persons per acre. Rateable value of £3,021,196, equal to £4 2*s.* per head of population, in 1950-51 was nearly back to the total of £3,022,315 in 1946-47, following recovery, largely as a result of local authorities' housing activities, from a loss of more than £100,000 when transport and electricity hereditaments were de-rated under the Local Government Act, 1948. Net loan debt was £1,314,675 at March 31, 1951, compared with £1,053,635 four years earlier, but the amount of interest payable has not risen proportionally since the average charge has fallen from £4 5*s.* to £3 *per cent.*

Total rate fund expenditure rose from £7,806,065 in 1946-47 to £9,423,436 in 1950-51, but net expenditure met by the county council from rates and balances fell by nearly one-half, from £1,898,654 to £1,013,485. In 1950-51, rates and balances bore eleven *per cent.* of total expenditure, compared with twenty-five *per cent.* in 1946-47, mainly due to alterations in the system of government grants under the Act of 1948. Exchequer Equalization Grant to the county of Glamorgan amounted to £2,733,087 in 1950-51 and was equivalent to a general county rate credit of 20*s.* 2*d.* in the £. Rate precepts of the county council totalled 7*s.* 6*d.* in the £ in each of the three years to 1950-51, following a period of three years in which the total was kept constant at 15*s.* 11*d.* in the £.

COUNTY OF NORFOLK

Statistics of county districts, in addition to statistics and a summary of the accounts of the county council, are given in the booklet prepared by the county treasurer (Mr. T. Clay) for the year ended March 31, 1951. Population at mid-1950 was 30,495 in the two boroughs, 41,703 in the ten urban districts and 290,792 in the fifteen rural districts, making up a total of 362,990 in the administrative county. Rateable value per head of population was highest, at £9 17*s.* 8*d.*, in the urban district of New Hunstanton, and lowest, at £2 9*s.* 11*d.*, in the rural district of Marshland; the average for the county as a whole was £3 18*s.* 1*d.* per head. A table analysing the number of hereditaments and rateable values in four classes in each county district also provides information that the average rateable value per dwelling-house was £11 16*s.* in King's Lynn borough, £20 16*s.* (highest in the county) in New Hunstanton urban district, and £7 in Marshland rural district; the lowest in the county was £6 in Downham rural district. The highest rate poundage levied in 1950-51 was 23*s.* in Thetford borough, and the lowest 13*s.* 4*d.* in part of Marshland rural district.

Gross revenue expenditure of Norfolk county council rose from £3,561,364 in 1946-47 (when £742,821 was included for public health and public assistance services largely transferred from the county council on July 5, 1948) to £5,332,040 in 1950-51. Part of the increase was met from an Exchequer Equalization Grant of £1,140,000, substituted in 1950-51 by the Local Government Act, 1948, for a General Exchequer Grant of £555,785 in 1946-47 under the Act of 1929. All government grants receivable by the county council in 1950-51 totalled £3,706,683 (including £1,466,557 for education and £586,929 for highways), being seventy *per cent.* of the gross revenue expenditure of the county council. The net cost of education in Norfolk was equivalent to a rate of 9*s.* 7*d.* in the £ in 1950-51, and that of highways to 7*s.* 7*d.* in the £, both of these services, together with others, being partly financed from Exchequer Equalization Grant equivalent to 16*s.* 10*d.* in the £.

Numerous other interesting statistics include the information that at March 31, 1951, loan debt was equal to £5 8*s.* 5*d.* per head of population; gross revenue expenditure on highways, excluding trunk roads, fell from £201 per mile of road in 1949-50 to £178 in 1950-51; the average rent per acre of smallholdings rose from £2 8*s.* 10*d.* to £2 17*s.* 6*d.*; and the average cost per week of each of 662 residents in county welfare homes was £3 6*s.* 6*d.* in 1950-51.

RURAL DISTRICT OF YEOVIL

A high degree of professional skill, embellished by a typist with a keen eye for effective display, has enabled the chief financial officer (Mr. R. J. Parsons, A.I.M.T.A.) to produce an excellent abstract of accounts and statistics for 1950-51. Prefatory observations show that income of £60,227 brought into the Housing Revenue Account was contributed by tenants to the extent of sixty-three *per cent.*, taxpayers thirty *per cent.* and ratepayers seven *per cent.* The surplus on this account rose during the year by £399 to £4,414 at March 31, 1951, when there were no arrears of rent on any of the council's 1,294 houses and seventy-three requisitioned properties and service huts. Weekly rents ranged from 9*s.* for a pre-war two-bedroom house to 15*s.* for a four-bedroom post-war house. Representations to the Ministry of Local Government and Planning resulted in a reduction of the annual payment made by the council in respect of aluminium bungalows, from £21 10*s.* to £20 13*s.* per bungalow following an average deficit of £8 2*s.* 4*d.* on each, compared with £6 anticipated. The annual contribution to Housing Repairs Account has been raised from £9 9*s.* to £10 in respect of each permanent house, intended to cover external re-painting every seventh year by the council's direct labour force.

The rural district has an area of 53,495 acres, a population 22,345 (16,449 at the 1931 Census), a rateable value of £83,845 (equal to £3 15*s.* 1*d.* per head), and delegated county roads have a length of 248 miles, including 141 miles of classified roads. An analysis of rateable value shows that sixty-seven *per cent.* of the total was in 5,867 dwelling-houses, of which 3,701 had a rateable value not exceeding £8 and 1,459 between £9 and £15. The water undertaking gives supplies in all thirty-one of the parishes in the rural district, and in 1950-51 the Somerset county council contributed £2,427, being one-third of the deficit, the remainder forming a charge equivalent to 1*s.* 3*d.* in the £ on the general rate. Substantial grants have been received or promised from the Government towards expenditure on sewerage schemes, and the county council contribute fifty *per cent.* of the net rate charge in excess of the product of a sevenpenny rate. Total rates levied in the thirty-one parishes in 1950-51 ranged from 17*s.* 6*d.* in the £ in twelve to 19*s.* 3*d.* in one having additional items of 4*d.* and a special rate of 1*s.* 5*d.*

MIS-LEADING

The knottiest problems we tackle,
The ones that surround us with books,
Are the ones on a half sheet of paper
Which bear the most innocent looks.

J.P.C.

THE CORRECT APPROACH

It's very gratifying to see
How kindly Time has dealt with me,
When you observe the shabby way
It's treated others of my day.

J.P.C.

MISCELLANEOUS INFORMATION

CHRISTMAS 1951 : CLOSING HOURS OF SHOPS

In Home Office Circular 236/1951, the Secretary of State says he has had under consideration the question of exercising his power under subs. (1) of s. 43 of the Shops Act, 1950, to suspend the operation throughout England and Wales of the provisions of the Act relating to general closing hours during the few days immediately before Christmas, but he does not propose to exercise this power this year.

Local authorities have powers, under subs. (2) of s. 43 of the Act, to suspend the general closing hours, subject to the limitations imposed by the proviso to subs. (2) which prohibits suspension for more than seven days in the aggregate in any year, and the Secretary of State is advised that it is open to local authorities in districts where the circumstances justify it to exercise this power at Christmas.

ROAD ACCIDENTS—SEPTEMBER, 1951

Road casualties in Great Britain during September totalled 19,810, including 438 killed and 4,753 seriously injured. There was the usual seasonal decrease compared with August, but the total was 450 more than for the corresponding month last year. It was the highest figure for September since the war and only about 800 less than for September, 1938.

WEST HARTLEPOOL DEVELOPMENT PLAN

As printed at pp. 24, 41, *ante*, the first public local inquiry in respect of a development plan was held at West Hartlepool in November, 1950. The Minister of Housing and Local Government has now approved, with modifications, the £5,500,000 development plan for the County Borough of West Hartlepool. The plan is the first incorporating comprehensive development areas and designations of land for compulsory purchase to receive the Minister's approval under the Town and Country Planning Act, 1947.

Mr. A. Limon, Borough Treasurer, stated at the inquiry that, of the estimated cost of £5,500,000 for all purposes over eighty years, £3,500,000 would fall on the rates, £1,500,000 on the Exchequer, leaving a balance of £500,000 to be recouped from ground rents.

The Minister's principal modification affects the comprehensive development scheme for the town's central area and, in particular, the proposed establishment of a compact, seventeen and a half acre shopping centre to overcome the wide dispersal of shopping facilities which now exists. It was this section of the plan which, through Mr. Michael Rowe, K.C., a large proportion of local traders, including the multiple stores, opposed at the inquiry.

After commenting on the difficulties likely to be encountered in carrying out such a move, and the cost likely to fall on public and other funds, the Ministry's letter states :

" Despite the considerable weight of objections brought forward by trading interests, the Minister considers that movement of the shopping centre would effect an important town improvement and he therefore approves the move as an objective and as the broad basis on which the Council should administer development control. But it is clear that for a town the size of West Hartlepool a movement of the shopping area will be a very large undertaking and that the cost might prove very heavy.

" This will largely depend on the care with which the financial and estate management aspects of the project are taken into account by the Council, particularly at the outset, and the Minister feels that these aspects should be more fully considered."

The comprehensive development area map and the programme map suggested a particular method of implementing the proposal " to which the Minister cannot at this stage commit himself." He therefore proposed setting aside those maps pending further consideration of the way in which the move could be most successfully carried through.

The letter continues : " The modifications in the central area part of the Programme Map for the Town Map have the effect of relegating most of the proposals for that area to the category of development which is expected to be undertaken and substantially completed during the twenty-first and subsequent years following the approval of the development plan. In making this modification, the Minister's object has been to fix the period within which it can reasonably be expected at the present time that the development involved will be carried out.

" It remains open to the Council, however, to submit, as an amendment to the plan, proposals for the comprehensive development of the area, and the Minister wishes it to be understood that the modifications which he has made would not, in that event, preclude revision of the programme in such a way as to speed up the progress of the development. Indeed, the Minister shares the anxiety which will no doubt be felt by the Council that an early conclusion should be reached about the method and the programme for carrying out the movement of the shopping centre and he hopes that the Council will be able to submit in the reasonably near future such an amendment. To that end, he thinks it will be useful for any such proposals to be discussed in the first instance by his officers and Council representatives ; and officers of the Department would be prepared to participate also in a meeting with representatives of the trading interests if the Council thought that this would be useful."

Two further modifications, one curtailing a proposed park area and the other re-siting a technical college, have both been made for the purpose of preserving agricultural land.

In addition to the central area, the plan embodies two other comprehensive development areas, and these have been approved. The Council's zoning proposals are accepted *in toto*.

Commenting on the Minister's findings, Mr. E. J. Waggott, Town Clerk, showed that with the shopping centre accepted in principle, it would now be open to traders to proceed, if they could get licences, on their own initiative, knowing where the centre was to be. The Council hoped they would do this. Consultations on the lines the Minister suggested would no doubt be initiated without delay.

DISTRIBUTION OF GERMAN ENEMY PROPERTY

" Relevant time " date altered

Representations have been made to the Board of Trade by the Stock Exchange, the Council of Foreign Bond Holders and the Committee of British Long Term and Medium Term Creditors of Germany concerning certain difficulties which have arisen in connexion with the Distribution of Enemy Property (No. 2) Order, 1951.

In the light of the discussions which have taken place with these bodies, the Board of Trade announce that an Order in Council will be made as soon as possible to amend the date given in art. 2 (1) (*f*) of the order as the " relevant time " for the purposes of the order by substituting November 7, 1951, for September 30, 1951.

Provision will also be made to enable the Administrator to accept claims from persons who since November 7, 1951, purchase obligations and who would otherwise have been debarred from making claims.

The Board of Trade have undertaken to consider further representations made as to difficulties of proof of ownership of the non-Reich bonds referred to in paragraph 34 of the report of the Advisory Committee on the Distribution of German Enemy Property.

NEW COMMISSIONS

MARGATE BOROUGH

Claude Boucher Hosking, 254, Northdown Road, Margate.

MARLBOROUGH BOROUGH

Ernest Marchant Kenber, Hyde Close, Marlborough, Wilts.

READING BOROUGH

Louis Philip Hands, 39, Berkeley Avenue, Reading.
Robert Wilferd Lambourne, 52, Donnington Road, Reading.
Philip Harrison Mann, Leighton Hall, The Warren, Caversham, Reading.
Stanley Joseph Milward, Hazelhurst, Pangbourne, Berks.
Mrs. Ada Margaret Salzmann, 5, Western Elms Avenue, Reading.

SAFFRON WALDEN BOROUGH

Charles Edward Swan, 66, Victoria Avenue, Saffron Walden.
John Harry Wiseman, The Roos, Saffron Walden.

STAMFORD BOROUGH

John Alexander Dale, 41, St. Martins, Stamford, Lincs.
Harold Knowles, 6, Drift Avenue, Stamford, Lincs.
Neville Anthony Pledger, Tinewell House, Stamford.

TYNEMOUTH BOROUGH

Mrs. Maud Ballantine, Prior's Close, Cambo Place, Cullercoats, Northumberland.
Robert Bilton, 15, Princeway, Tynemouth.
George Reginald Foreman, 8, Kingsway, Tynemouth.
John George Greener, 16, Hawkeys Lane, North Shields.
Mrs. Martha Mayo, 12, Ancroft Avenue, North Shields.
Mrs. Florence Margaret Ramshaw, 37, Burdon Street, Percy Main, North Shields.
Stanley Shotton, 39, Queensway, Tynemouth.
John Munby Walker, St. Trinians, 3, Preston Park, North Shields.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 81.

WHISKY—AN UNLAWFUL DEAL

A wholesale newsagent was charged at Broadstairs Magistrates' Court recently, first, with buying spirits from a person not having authority to sell the same, contrary to s. 148 of the Spirits Act, 1880; secondly, with removing certain spirits required by s. 107 of the same Act to be accompanied by a permit, namely thirty-six bottles of Canadian Club whisky, without such permit, contrary to subs. 1 (*a*) of the said section, and, thirdly, with dealing with uncustomed goods, namely thirty-six bottles of Canadian Club whisky with intent to defraud His Majesty of the duties thereon, contrary to s. 186 of the Customs Consolidation Act, 1876. The third charge was withdrawn by the prosecution.

The prosecutor for the Commissioners of Customs and Excise, who instituted the proceedings, stated that defendant took a woman and her daughter, who was keeping company with an American sergeant, to Manston aerodrome in his van. He was there introduced to the sergeant, and bought from him three cases comprising thirty-six bottles of Canadian Club whisky at 32*s.* 6*d.* a bottle, for which he paid £58 10*s.* Defendant told Customs officers that he thought he had paid the duty on the whisky, and made no attempt to conceal possession of them. The bottles were marked "imported."

For the defendant, who pleaded guilty to both summonses, it was stated that he was asked by the mother of the American sergeant's girl friend if he would like to buy four or five bottles of whisky at 32*s.* 6*d.*, and he said "Yes." He was surprised when he arrived at the aerodrome and was offered three dozen bottles. He did not want them, but felt that he would be letting the sergeant down if he did not take them.

Defendant was fined £50 on the first summons, £10 on the second, and was ordered to pay £21 costs.

COMMENT

Section 148 of the Spirits Act, 1880, imposes an absolute prohibition, and a purchaser who *bona fide* believed that the person from whom he bought had authority to sell would be liable to conviction under this section if such person had, in fact, no such authority. The maximum penalty on conviction under this section is £100.

A person convicted under s. 107 of (*inter alia*) removing spirits required to be accompanied by a permit, without such permit, may be fined £500. Section 105 details the circumstances in which spirits may not be moved without a permit, and subs. 6 of the section prohibits removal in quantities exceeding one gallon (seven bottles).

Mr. D. C. Payne, clerk to the justices for the Thanet Division of Dover, to whom the writer is much indebted for this report, suggests that it may be helpful to comment upon the power in cases such as this to mitigate the statutory penalty, and he points out that the form of summons prepared by the Commissioners of Customs and Excise invariably infers that upon a conviction the full penalty provided by the section is automatically invoked.

This topic is not uninteresting and it may be helpful to delve a little into it.

A good illustration is afforded by s. 107 of the Spirits Act, 1880. The section, after listing a number of offences which will be committed if a permit does not accompany the removal of spirits, provides that the offender "*shall*, in addition to any other penalty or forfeiture, incur a fine of £500."

At first blush, it would appear that there was no discretion left to justices as to the penalty they should inflict upon a conviction under this section, for the wording is clearly mandatory.

It is, however, provided by s. 4 of the Summary Jurisdiction Act, 1879, that, notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this Act, or any other Act, whether past or future, ". . . to impose a fine for an offence punishable on summary conviction, that court may, . . . in the case of a fine if it be imposed in respect of a *first* offence, reduce the prescribed amount thereof."

Section 78 of the Excise Management Act, 1827, provides that it shall be lawful for justices of the peace when they shall see cause ". . . . to mitigate any penalty incurred for any offence committed against any Act of Parliament relating to the revenue or excise so however that such mitigation shall not reduce such penalty to less than one fourth part thereof."

The effect of these provisions was clearly brought out in *Murray* v. *Thompson* (1889) 53 J.P. 70. In that case, Mr. Thompson was convicted for the second time of failing to take out a dog licence. Section 8 of the Dog Licences Act, 1867, provides for a penalty of £5 upon conviction of this offence. Upon Mr. Thompson's first conviction he was fined 2*s.*, the learned stipendiary magistrate who heard the case taking advantage of the provisions of s. 4 of the Summary Jurisdiction Act, 1879.

Upon Mr. Thompson's second conviction, another stipendiary magistrate fined him 9*s.* 6*d.* but the prosecutor, feeling no doubt aggrieved at the nominal penalty imposed, took the matter to the Divisional Court upon the ground that the magistrate had no power to impose so low a fine.

Mr. R. J. Biron, the magistrate concerned, in stating a Case for the opinion of the court, took the line that as the previous conviction was not set out in the information and summons, he was bound to deal with the case as though it was a first offence and therefore he had discretion under s. 4 of the Act of 1879 to reduce the amount of the fine to the figure he had in fact imposed.

The Divisional Court held that this view of the learned magistrate was erroneous in law and that the minimum fine which he was entitled to impose by virtue of s. 78 of the Act of 1827 was 25*s.*

R.L.H.

No. 82.

A WICKED WOMAN

A woman of thirty-five, the mother of four children, appeared at Eastbourne Magistrates' Court on October 29 last to answer seven charges contained in two informations. Three charges alleged that the defendant had received stolen goods from her eleven year old daughter contrary to s. 33 of the Larceny Act, 1916. The value of the goods was £23, £7, and £26 respectively. The remaining four charges alleged that the defendant had stolen property from various multiple stores, contrary to s. 2 of the Larceny Act, 1916. The value of the goods in each case was under £5.

The eleven year old daughter was jointly charged with her mother upon the latter four charges.

For the prosecution, it was stated that the method of the mother was to send the daughter with another sister or brother, each with a shopping bag, into a store. When the children came out they emptied their bags into the mother's large bag and went in again. The family had done this at Eastbourne, Bexhill and Hastings for nine months.

In a statement made to a policewoman the girl had said "Mummy gave us a bag each and told us to take things."

Defendant and the daughter pleaded guilty to all charges, and asked for similar cases to be taken into consideration. Five hundred and thirty articles of a value of £226 were involved.

The mother was sentenced to twelve months' imprisonment, and arrangements were made for the girl to be sent to an approved school, the chairman saying "She is never to be brought under the influence of that woman again."

(The writer is indebted to Mr. Harold Glenister, clerk to the Eastbourne Justices, for information in regard to this case.)

R.L.H.

PENALTIES

Barnsley—October, 1951—driving a car while under the influence of drink (two charges) fined a total of £75. To pay £4 4*s.* costs and disqualified from driving for twenty years. Defendant, a woman of forty-nine, committed the second offence while on remand in respect of the first offence committed two months earlier.

Bolton—October, 1951—driving a car while under the influence of drink—fined £100. To pay £2 2*s.* costs. Disqualified from holding a licence for eighteen months. Defendant a forty year old doctor.

Market Drayton—October, 1951—dangerous driving—fined £30. To pay £2 costs and disqualified from driving for two years. Defendant, a youth of nineteen, drove a car which collided with a motor-cycle. The motor-cyclist later died.

Lancaster—October, 1951—motor manslaughter—twelve months' imprisonment. Disqualified from driving for five years. Defendant a bus driver aged thirty-five. His bus collided with a motor-cycle, the driver of which subsequently died.

Herefordshire Quarter Sessions—October, 1951—robbing telephone kiosks in hotels of a total of £21 16*s.* 10*d.* (three charges)—seven years' preventive detention. Defendant asked for 139 other cases totalling £762, to be taken into account.

Oxford—October, 1951—receiving cases of stolen beer (three defendants)—each sentenced to six months' imprisonment. Defendants were licensees. Two at Oxford and one at Thame.

Bradford—October, 1951—stealing three books value 3*s.* from another policeman fined £5. To pay £1 5*s.* costs. Defendant a constable aged twenty-five.

REVIEWS

Lushington's Law of Affiliation and Bastardy. Seventh Edition. By A. J. Chislett, B.Sc. London : Butterworth & Co. (Publishers) Ltd. Price 25s.

Mr. Chislett is at present clerk to the county justices, Wallington, Surrey, and was formerly a chief clerk, in the Metropolitan Magistrates' Courts, at Bow Street Magistrates' Court. He has had, therefore, long practical experience of this difficult subject and has been able to make this seventh edition worthy of its predecessors. As he says in his preface " a new and comprehensive Bastardy Act is still to be desired." In this he is quoting the author, Albert Lieck, of the previous edition published in 1936, and here we are in 1951, with many new provisions tacked on, more or less conveniently, to the old law and still with no consolidating statute.

Mr. Chislett's task cannot have been an easy one. He has had to consider old cases in the light of more recent ones, to deal with and to annotate new provisions such as those contained in the Emergency Laws (Miscellaneous Provisions) Act, 1947, the National Assistance Act, 1948, the Children Act, 1948, and the Maintenance Orders Act, 1950. These do not exhaust the list. There is a mass of cases on such matters as " single woman " " corroboration " " dismissal on the merits " and so on. Although the method of treatment in this edition, which follows that in earlier ones, necessarily involves reading the summarized effect of a number of cases when one is seeking guidance on a particular point, we do not see how this can be avoided. The cases are there, they do not always follow one another as could be desired, and their combined effect must be considered to arrive at a satisfactory conclusion. New cases seem to be adequately dealt with, there is a great deal of useful cross-reference, and the index, so far as we have tested it, has enabled us to find, without difficulty, what we were looking for.

Mr. Chislett is to be congratulated on a workmanlike treatment of his difficult subject, and practitioners, clerks to justices and others will welcome, after this long interval, a new edition which brings the law up to date to the end of July, 1951. Is it too much to hope that Parliament will, before too long, find time to consolidate and simplify this branch of the law ?

Police Law. An Arrangement of Law and Regulations for the Use of Police Officers. Eleventh Edition. By Cecil C. H. Moriarty, C.B.E. London : Butterworth & Co. (Publishers) Ltd. Price 12s. 6d. net, by post 9d. extra.

It has often been observed sometimes by distinguished judges, that it is remarkable that police officers acquire so much knowledge of law and make so few mistakes in the exercise of their duty. The old time policeman learned most of his work on the beat, much of it from his sergeant, but today there is so much to be learnt that he needs lectures and books as well as experience to guide him. Dr. Moriarty's book, first published more than twenty years ago, is just the handbook for police officers, whether new or experienced. The author, as a former Chief Constable of Birmingham, knows exactly what police duty means, and can expound the law in the light of experience as well as learning.

Police Officers sometimes have to pass examinations for promotion, and here is a good book for them to study. On duty at the station they may wish to look up some point about their powers or about court procedure. In this well-planned book they will easily find what they need. Powers of arrest, questions as to cautioning or questioning prisoners and suspects, grant of bail, taking fingerprints, all these are among the many important and difficult matters upon which police officers need to be informed and which they can find adequately dealt with in *Police Law*.

We notice one small matter upon which we would suggest a slight alteration. It is stated that a summary court should decide to hear *in camera* proceedings under the Guardianship of Infants Acts, 1886 and 1925, and the Marriage Act, 1949. We cannot help thinking that the word " may " ought to be substituted for " should," *see* the Guardianship of Infants (Summary Jurisdiction) Rules, 1925.

The division into chapters, each with a detailed table of contents, the full index and the use of heavy type for headings, make for easy reference throughout a book which we heartily commend to police officers of all ranks.

Traffic Control and Road Accident Prevention. By Captain Athelstan Popkess, O.B.E. London : Chapman and Hall. Price 37s. 6d. net.

The author's claim to be an authority on this very important subject is well founded on years of practical experience and study. He has been Chief Constable of Nottingham since 1930, and before that he was responsible for a number of years, in his capacity as Provost Marshal of the Aldershot Command, for the organization of traffic on the occasions of the Aldershot Tattoo.

As will be noticed this book is not a cheap one, and its price may well prevent a number of people who would benefit by reading it from having access to it except in a library. It deals with all the many difficulties which have to be faced if a satisfactory solution of this very complex problem is to be found, and gives in addition useful information on matters which are the concern of those who have to enforce our traffic laws. Road surfaces, street lighting, the conduct of various kinds of road users, traffic offences, the causes of traffic congestion, street and off-street parking, the reporting of accidents, the collection of statistics of accidents with a view to analysing their causes are some of the matters dealt with. There are many helpful photographs, and a section on the taking of photographs is included. Included in this are two pictures illustrating how, by reversing a negative in the process of printing, a false idea can be given of which side of a car has suffered damage. It would appear from a study of these that there has been some " faking " of the number plate to avoid the deception in print (b) being noticed.

It is a pity that the new pedestrian crossing regulations were not available for reference to be made to them in a book which has only just been published, but that is a difficulty which all authors have to contend with particularly now that there is often such a delay between the sending-in of manuscripts and the publication of the book.

Local authorities, and police authorities in particular, should find this book of great value when they are considering any of the many problems with which it deals. Even if they do not agree with all that the author says, it will give them a great deal of information, much of which is not controversial. We must all as individuals be concerned with street accidents and traffic control. The author states that up to December, 1944, 370,000 British people were killed on all fronts in the last war. During the same period 588,000 were killed and injured on our roads in motoring accidents, and the danger does not lessen. Whilst proper conduct by all road users is essential if there is to be an improvement, better road conditions (camber, bends, surfacing, lighting) can contribute a great deal and the author has much to say about this. Unfortunately the cost of many of the desirable improvements may well mean their postponement for many years, but anything which can be done should be put in hand as soon as possible. Meantime let us all improve our road manners, in whatever capacity we may be using the roads.

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

BURIAL OF THE DEAD

In your article under the heading "Exit Pauper Funeral" at p. 629, *ante*, you state the " The National Assistance Act, 1948 . . . did however take the power and the very limited duty (of burying poor persons) out of the hands of the councils of counties and county boroughs, perhaps because of the supposed poor law taint which those councils had inherited from boards of guardians . . . "

I would respectfully draw your attention to the following provisions of the Act which you appear to have overlooked :

Section 50 (1)—places a duty on (*inter alia*) the councils of county boroughs to bury or cremate the body of any person who has died or been found dead in their area in any case where it appears that no suitable alternative arrangements are being made for the disposal of the body.

Section 50 (3)—gives to the councils of county boroughs and county councils the power to bury or cremate the body of any person who immediately before his death was being provided with accommodation under Part III of the Act.

Yours faithfully,
G. E. SMITH.

West Ham Town Hall,
Stratford, E.15.

[We had not overlooked these subsections. Since the duty is given to councils of all boroughs and districts, the county borough could not be left out—our point is not affected, that the duty has ceased to be a duty of the former poor law authorities as such. Subsection (3) has a different origin, and, again, does not affect the point we were making.—*Ed., J.P. and L.G.R.*]

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Speaking in reply to an adjournment debate in the Commons on cruelty to children, the Secretary of State for the Home Department, Sir David Maxwell Fyfe, said that the number of convictions for ill-treatment or neglect under the Children and Young Persons Act of 1933 during the first six months of 1951 was 531 as compared with 524 for the first six months of 1950.

Those figures left no room for complacency. One thousand cases a year were 1,000 cases too many. But it had to be recognized that there was no evidence of an increase in the number of cases of cruelty to children. The average number of convictions over the last four years was 991, and that was not much higher than the number in 1938, which was 944. In 1920 for similar offences, under an earlier Act, the figure was 1,533, and in 1900 it was 3,226.

It had to be remembered that many of the convictions were for neglect as distinct from cruelty. Fortunately, those which involved the deliberate infliction of pain were few. Some of the graver offences were dealt with under the Offences Against the Person Act, under which penalties ranged up to imprisonment for life. Figures of the number of children who were the victims of such offences were not available, but the number could not be large.

On the question of penalties, Sir David said that under the Children and Young Persons Act of 1933, upon indictment a person convicted might be fined £100 or imprisoned for two years or both. Upon summary conviction, the figures were £25, six months' imprisonment or both. Penalties actually imposed in 1950 were : in the magistrates' courts under the 1933 Act, 253 people fined, 230 imprisoned up to three months, 140 imprisoned for between three and six months, and 326 dealt with otherwise, mainly by probation orders. In the higher courts one person was fined, eight were imprisoned for up to six months, four were imprisoned for between six months and one year, and three were imprisoned for between one and three years. Nine persons were otherwise dealt with.

It had been suggested that circulars should be sent to magistrates. In his view it would be improper for the Executive to suggest to the judiciary that a particular class of offence which aroused general abhorrence should be visited with particular penalties. It was the duty of the courts to consider each case upon its merits. That involved considering the nature of the offences and the character and circumstances of the offenders.

" May I remind the House that in these days when the size of newspapers is small, the circumstances of the offenders are not always reported in detail," continued the Minister, " It is not quite fair to magistrates to suppose that considerations that spring to the mind of readers of such reports have altogether escaped them, or may not have been outweighed by others which were not reported. One must remember the other side of the matter, that of the family still left—the children who may not have been ill-treated and the effect that there may be, even after a case of cruelty, of splitting up the family at that time."

There were various types of offenders. One was the problem family, the subnormal and the socially incompetent. Another class consisted of the selfish parents unwilling to forego their own pleasures to look after their children. There were also the unskilled or unstable parents with no resources against the misbehaviour of difficult children except violence. It was probably from the last class that serious cases of brutality arose. It was only in a small proportion of cases that there was deliberate intention to inflict pain for the sake of inflicting it.

Dealing with preventive measures, Sir David said he believed that local statutory and voluntary bodies could, and did, help those in the various classes he had mentioned. A joint circular was sent to local authorities by the Home Office, the Ministry of Education and the Ministry of Health on July 31, 1950. It advocated full co-ordination of local arrangements and the designation of an officer to secure it. Most local authorities had designated an officer.

The N.S.P.C.C. did most useful preventive and advisory work, as well as prosecuting in certain cases where necessary. The Home Secretary had no power to prosecute.

He did not think there was a case for increasing the maximum penalties but he thought there was a need to ensure that consideration was given to the method of prosecution, having regard to the gravity of the case. He intended to discuss with the police and the N.S.P.C.C. their need as prosecutors to consider in every case where injuries were deliberately inflicted whether there was cool, calculated cruelty to children. The first question was whether the charges should be brought under the Offences Against the Person Act, which made the offence more serious and the penalties heavier. The second point to be considered in all cases was whether the circumstances were such that instead of applying to the magistrates for summary trial, the justices should be invited to consider committing for trial in the higher court.

In conclusion, Sir David said : " I assure the House I am not going to rest on this problem and, by the discussions that I have, I shall see that those whose duty it is to investigate do investigate it with due regard to its seriousness."

SCHOOL ATTENDANCE CASES

Mr. T. E. Watkins (Brecon and Radnor) asked the Attorney-General what action had been taken to prevent magistrates in the County of Radnor, who were members of the local education committee, from taking part in cases of prosecution for non-attendance of children at school.

The Attorney-General replied that the Secretary of State for the Home Department had addressed a letter to all clerks to justices, including those in the County of Radnor, calling their attention to the provisions of s. 3 of the Justices of the Peace Act, 1949, which disqualified justices who were members of local authorities from sitting to deal with cases in which the authority or any of its officers were parties.

PRISON PUNISHMENTS

The Secretary of State for the Home Department, Sir D. Maxwell Fyfe, states in a written Parliamentary answer that Parts III and IV of the report of the Committee on Punishments in Prisons, Borstals, Approved Schools and Remand Homes are likely to be published early in December.

CAPITAL PUNISHMENT REPORT

Sir David told Mr. Hector Hughes (Aberdeen N) that he understood the Report of the Royal Commission on Capital Punishment would not be ready for some months.

PERSONALIA

RETIREMENTS

Mr. W. K. Pearce, has retired from the appointment of clerk to the justices for the petty sessional division of Hythe in the county of Southampton. Mr. Hugh Stone has been appointed to succeed him.

Mr. H. J. Deane, coroner for North Leicestershire for fifty years, is to retire.

Capt. S. J. Fowler, coroner for Rutland for twenty-one years, is to retire.

NOTICE

The next court of quarter sessions for the borough of Grantham will be held on Wednesday, December 19, at 11 *a.m.*

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, November 22

EXPIRING LAWS, CONTINUANCE BILL, read 2a.
INCOME TAX BILL, read 2a.

HOUSE OF COMMONS

Monday, November 19

FESTIVAL PLEASURE GARDENS BILL, read 1a.

Wednesday, November 21

BORDER RIVERS (PREVENTION OF POLLUTION) BILL, read 3a.

Thursday, November 22

MINISTERS OF THE CROWN (PARLIAMENTARY UNDER-SECRETARIES) BILL, read 1a.
HOME GUARD BILL, read 2a.
PNEUMOCONIOSIS AND BYSSINOSIS BENEFIT BILL, read 3a.

Friday, November 23

PUBLIC WORKS LOANS BILL, read 2a.

PUFFS, BALLOONS AND SMOKEBALLS

The schoolboy in the story, who misquoted a line from Shakespeare's *As You Like It* in the form "Sweet are the uses of advertisement" was prophesying more truly than he knew. In England, at any rate, recent trends in advertising have on the whole shown a great improvement in artistic and literary merit, with the appeal directed more to the intelligence than to the instincts of the potential customer. Eschewing the shock tactics of the American advertiser, English manufacturers are resorting more and more to fantasy, humour and historical allusion in making their appeal.

The honest native origin of English beer is suggested in posters embellished with excellent reproductions of Constable landscapes; the health-preserving qualities of wool are emphasized in verses and pictures which delicately impute the distinction of this or that historical personage to the prophylactic effects of pure woollen underwear; even the grave subject of road traffic casualties is enlivened by charming drawings of humanized animals, designed to impress upon children the importance of learning when, where and how to cross a busy street.

Side by side with this cultural tendency is another line of presentation, which takes account of and cleverly exploits the public delight in what the journalists call "a human story." Along this line the quiet territory of English advertising has been invaded by the powerful influence of the American strip-cartoon. Sometimes the protagonist is an author, sometimes a circus trapeze-artist, a high-pressure salesman or a stenographer. Scene 1 shows him (or her) working happily at the chosen profession. In Scene 2 something has gone seriously wrong; *he* cannot finish the crucial chapter, or finds his sales-talk ineffective; *she* is in danger of missing the swinging trapeze, or of being dismissed for mistakes in spelling. The mental anguish thus caused is depicted in Scene 3, where he or she is seen confiding in a spouse, a bosom friend or an elderly parent. Here the two characters are graphically represented with balloons of irregular shape issuing (like protoplasm at a *séance*) out of their respective mouths, the victim's enclosing the despairing words "I'm losing my grip!"; the other bearing an exhortation to consult a doctor, in Scene 4 the balloon of the medical adviser, swollen to enormous dimensions, is carrying him into the rarefied atmosphere of pseudo-psychological jargon, ending with the adjuration to take SO-AND-SO'S BEDTIME TONIC regularly every night; while the victim, overwhelmed with this display of erudition (and doubtless by now profoundly regretting his visit) can do no more than bleat feebly, through his balloon of grosser material, that he "even wakes tired after eight hours' sleep."

This is the climax; the *dénouement* is happy. Scene 5 shows the invalid, his satisfaction portrayed by a self-righteous smirk, imbibing large doses of the health-giving fluid. The final scene shows him (or her) receiving a cheque from his publishers, the plaudits of the multitude, a rise in salary or (in extreme cases) the hand of the boss in marriage. The inevitable balloon attachment, soaring triumphantly from the head, to indicate cogitation, now bears the legend: THINKS—"THANKS TO SO-AND-SO'S BEDTIME TONIC."

These reflections are stimulated by a re-reading of the well-known case of *Carlill* v. *Carbolic Smoke-Ball Company* [1893] 1 Q.B. 256. Proprietor of a medical preparation called "The Carbolic Smoke Ball," the defendant company inserted in a newspaper the following advertisement:

"One hundred pounds reward—will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza, colds or any disease caused by taking cold after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. One thousand pounds is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter."

The plaintiff, a lady, on the faith of this advertisement, bought one of the balls and used it, as directed, three times a day from November 20, 1891, to January 17, 1892. On the last-mentioned date she was attacked by influenza.

It says much for the courage and forceful personality of the deluded victim that she thought it worth while to take proceedings against the Company. One wonders whether plaintiff or defendant was the more surprised when Hawkins, J., held that she was entitled to recover the £100. The defendant Company appealed. Leading for the plaintiff, appropriately enough, was Dickens, Q.C., a son of the novelist.

The first question considered in the Court of Appeal was whether the advertisement was intended to be "a mere puff which meant nothing." This question was answered in the negative, Lord Justice Lindley explaining the importance of the deposit of £1,000, which was "called in aid by the advertiser as proof of his sincerity in the matter."

The next contention of the defendant Company was that the promise was not made to anybody in particular. This, said the Lord Justice, is common to all advertisements offering rewards. "They are offers to anybody who performs the conditions named in the advertisement, and anybody who does perform the conditions accepts the offer." As regards the objection that there was no consideration for the offer, "Does not the person who acts upon the advertisement and accepts the offer put himself to some inconvenience at the request of the defendants?"

Lords Justices Bowen and A. L. Smith concurred, the former dismissing the objection that the conditions were ambiguous in the scornful words—"It could not be supposed that after you have left off using it you are still to be protected for ever, as if there was to be a stamp set upon your forehead that you were never to catch influenza because you had once used the carbolic smoke ball. I think the immunity is to last during the use of the ball."

Thus was the quietus given to reckless offers and extravagant claims by advertisers. Perhaps the stern logic of the judgments in the *Carbolic Smoke Ball* case has given impetus to the modern tendency towards propaganda by indirect and subtle suggestion rather than by strident and vociferous attack.

Occasionally, however, the advertiser is caught in the toils of his own ingenuity. Some years ago the present writer was caused some astonishment on reading an announcement by the manufacturers of a well-known toilet preparation (said to contain ingredients which we will call A and B) to the following effect: "Cleopatra used A and B three thousand years ago." Having for some weeks observed this startling pronouncement confronting him on the hoardings, the writer sent a helpful letter to the advertising manager, pointing out respectfully that Cleopatra, as everybody knows, was intimate with Antony; that Antony was a contemporary of Julius Caesar, who was assassinated in 44 B.C.; and inquiring politely whether the advertisers' claim was to be taken to imply that, by the use of their products, the Egyptian beauty had been able to maintain her charms unimpaired for upwards of 1,000 years. The advertising manager would appear to have lacked a sense of humour; no reply was ever received, but the advertisement was withdrawn.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building Materials and Housing Act, 1945—*Adjacent houses—Rearrangement of boundary—Loss of identity of houses.*

A licence was granted by this council to enable a house to be converted into five self-contained flats. The licence imposed a condition as to the maximum rent of each flat, describing them by reference to the deposited plan. The work of conversion was duly carried out in accordance with the plan with one exception. This exception, done apparently to meet the requirements of prospective tenants, was to include a room in flat D which was to have been in flat C. The cost of the work did not exceed the permitted amount. The owner has now asked the council to revise the rents so that he may increase the rent of the larger flat and at the same time reduce that of the smaller, the net total for the whole remaining the same.

I shall be glad to learn if you agree with the following conclusions :

1. That it is not possible to vary the condition as to rent since this has been duly registered as a local land charge ;

2. That if the landlord chooses to let the larger flat at a rent in excess of the licence figure or the smaller flat the full licence figure, no proceedings could be taken against him since it would not be possible to identify the flats now let with those included in the licence ;

3. On the assumption that the deviation from the deposited plan did not involve any infringement of building byelaws, that the alteration is not sufficient to justify proceedings for a breach of the licence.

CINQUE.

Answer.

1 and 3. We agree.

2. Everything here seems above board, but if a lessor could alter the identity of a house by altering its boundary, and so shed the limit on its price or rent, a wide door would be opened for evasion. As regards the larger flat, it can be argued that it is a house (to wit, the house to which the limit was attached) now let with other property (to wit, the added room) and therefore that s. 7 (6) applies : this is far fetched, but does enable a legitimate increase of size to be effected, and charged for, without the danger attendant upon saying that the house to which the limit was attached has disappeared. If, however, the addition be made to the rent of the larger flat, and no countervailing reduction be made in the rent of the smaller (while we agree that no offence is committed in respect of the smaller, which has not had its rent increased) we think it can be argued that the letting of the larger is associated with another transaction (namely, letting of an adjacent house) which brings to the lessor in respect of the larger flat a benefit to which s. 7 (5) applies. This again is far fetched, but we think the Divisional Court might accept it, rather than allow the lessor (in effect) to be paid twice over for the transferred room.

The net result is that, while the council cannot make any formal change, they can in our opinion properly inform the lessor that they see no objection, so long as the aggregate of the two rents is not increased.

2.—Election—*Qualification—Member unseated for failure to accept offices.*

Section 57 of the Local Government Act, 1933, provides that a person shall unless disqualified by virtue of this Act be qualified to be elected a member of a local authority subject to the qualifications therein specified. Section 61 provides that if an elected councillor does not sign and deliver to the clerk of the authority a declaration of acceptance of office within two months then the office of the person elected shall at the expiration of that time become vacant. Section 64 provides that where a member of a local authority ceases to be qualified to be a member of the authority the local authority shall forthwith declare his office to be vacant and give notice thereof. I shall be glad to have your opinion as to whether you regard a person who has not signed his declaration of office and whose office has in consequence been declared to be vacant as having ceased to be qualified and to be within s. 64, and therefore not having a qualification under s. 57.

I note that s. 84 (7) provides that a person shall be deemed to be disqualified for acting as a member of a local authority if he is not qualified, or if by reason of failure to make and deliver the acceptance of office he has ceased to be a member of the authority, but query whether that provision is restricted to "purpose of this section."

EBOR.

Answer.

Section 84 (7) is a definition for purposes of that section only, *i.e.*, for the purpose of liability to a penalty. It speaks for this purpose of being disqualified for *acting* as a member, and contains two limbs, of which (*a*) is being not qualified or being disqualified *aliunde* for being a member, and (*b*) is *inter alia* failure to make a declaration under s. 61. Section 64, again, contains three limbs of which the third is linked to s. 61. The reference quoted in your letter to "ceasing to be qualified" occurs in s. 64 (*a*), not in s. 64 (*c*). Neither s. 64 (*c*) nor s. 61 says anything about disqualification for *being* a member, or for being elected. A person who has vacated office under s. 61 is therefore entitled to stand as a candidate in the by-election thereby caused.

3.—Husband and Wife—*Maintenance arrears—Appeal.*

On August 27, 1946, A obtained a maintenance order against B in this court on the ground of desertion for £1 1*s.* per week, which order was subsequently varied to £1 10*s.* per week.

On January 30, 1951, a summons preferred by the wife for arrears of £52 10*s.* was heard by the court, and after inquiry as to means in the presence of the husband, the court was satisfied that the failure to pay was due to culpable neglect and committed B to prison for three months, suspended on payment of 5*s.* per week off the arrears.

B did not comply with that order and the committal order was released on August 8, 1951.

B is now in prison serving the term of three months' imprisonment.

B has written me a letter stating that he wishes to appeal against conviction, from which I assume he wishes to appeal against the committal order.

Your valued opinion is sought on the following point : Has B a legal right of appeal to the quarter sessions ? There appears to be no right of appeal to the Probate Division (*Griffiths* v. *Griffiths* (1909) 73 J.P. 391).

TONG.

Answer.

There is no right of appeal to quarter sessions. This is not a conviction or sentence to which s. 36 of the Criminal Justice Act, 1948, applies, and there is no other enactment conferring such right of appeal. If the defendant wished to appeal on a point of law he could apply to the justices to state a case for the opinion of the King's Bench Division.

4.—Husband and Wife—*Maintenance Orders Act*, 1950—*Registration and enforcement of English order in Scotland.*

A maintenance order is made in an English court under the above Act on behalf of the wife residing in England against the husband residing in Scotland. How is (1) service of the order on the husband to be effected, the Scottish police will not serve the order and the sheriff's officer in Scotland has said that he can find no provision in the Maintenance Orders Act, 1950, for service of an order on the husband ? Can service be effected by the wife through a process server ? and (2) should the order at once be registered in the Scottish court in which case notice will have to be given to the husband. Does not the Summary Jurisdiction (Process) Act, 1881, s. 4 and definition clause s. 8 apply ?

S.P.

Answer.

Although it is customary and desirable that a copy of the order be served on the defendant, we do not consider it obligatory. Maintenance arrears are enforceable in the same way as bastardy arrears, Summary Jurisdiction (Married Women) Act, 1895, s. 9, and by s. 4 of the Bastardy Laws Amendment Act, 1872, a warrant for arrears may be issued after at least fourteen days from the date of the order, no mention being made of service as a condition precedent. However, it seems to us that immediate registration in the sheriff court under s. 17 of the 1950 Act is the right course, in which case enforcement in Scotland will be as if the order were made there, and will be by that court. *See* s. 17 of the Act, and Rules 2 and 7 of the Maintenance Orders Act, 1950 (Summary Jurisdiction) Rules, 1950. It is doubtless the duty of the prescribed officer in Scotland, as in England, to give notice to the defendant, but this is a matter of the law of Scotland. If a certified copy of the order is transmitted to the sheriff court the position will no doubt become clear.

It is true that there is no provision in the Act of 1950 for service of an order, orders not being covered by s. 15, which deals with service of process. We think an order comes within the provisions of s. 4 of the Act of 1881, but as we have said, we do not think the question of service of a copy of the order arises in this case.

5.—Landlord and Tenant—*New term in contract requiring maintenance of dustbin—Rent Restrictions Acts.*

In a scheme to secure the use of dustbins in preference to ashpits my council have offered to property owners dustbins free of charge, provided they close, convert, or demolish the ashpits and undertake

the replacement of the dustbins as they wear out. A question has been raised as to whether a landlord can require his tenant to be responsible for replacing dustbins in such a case, or whether such action would come within the terms of s. 2 (3) of the Rent Restrictions Act, 1920, and be treated as an alteration of rent. In this connexion I have in mind the case of the *First National Housing Trust, Ltd.* v. *Chesterfield R.D.C.* [1948] 2 All E.R. 658; 111 J.P. 413, when it was held that the justices' decision, that notices requiring the owners to supply dustbins to their tenants were unreasonable, and could not constitute a transfer of burden within the meaning of s. 2 (3) of the Act of 1920, was correct. This decision appeared to be based on the fact that there was no contractual liability on the company to their tenants to provide dustbins; in the case which is the subject of my inquiry the ashpits form part of the structure of the houses, although not necessarily attached to the main buildings, and it is presumed that the tenants pay rents which cover the use of the ashpits.

It will be appreciated that my council's scheme is not the application of s. 75 of the Public Health Act, 1936, but the results have been much more successful and agreeable than could have been hoped for under the Act. Incidentally, the 1936 Act definition of a dustbin is "a movable receptacle for the deposit of ashes or refuse" but Lord Goddard in *Croydon Corporation* v. *Thomas* [1947] 1 All E.R. 239; 111 J.P. 157, stated, in reference to the obligation to keep a dustbin in repair, that "it need not be a movable dustbin; it might be a receptacle which is part of the outside structure of the house."

ALTOS.

Answer.

We are not told that the built ashpits are no longer fit for use: the inference, from the terms offered by the council, is that those ashpits could still be used; as you say, the rent covers a right on the part of the tenants to use them, and the proposal is to deprive the tenants of that right. We do not see how the landlord can deprive the tenant of this right, and require the tenant to assume the cost of maintaining something instead. This would, even apart from the Rent Restrictions Acts, involve termination of the tenancy and the beginning of a new tenancy on terms more burdensome to the tenant.

6.—Public Health Act, 1936—*Dustbins—Appeal—Landlord and tenant—Transfer of burden.*

We refer to the excellent articles on Dustbins by Mr. Lisle Bentham and Mr. M. Richardson in 114 J.P.N. 631, 115 J.P.N. 195, and 115 J.P.N. 485.

The local authority in this district, by a letter written by the sanitary inspector, has intimated to an owner of fifty-three cottages in one village that they are proposing to supply dustbins to these cottages if the owner does not do so within one week from the receipt of the letter. There has been no resolution of the council authorizing this action, but the sanitary inspector draws the owner's attention "to the provisions of s. 75 (3) of the Public Health Act, 1936, which empowers local authorities to provide dustbins." Each of the houses has a stone or brick built ashes pit, properly maintained and built at the same time as the house and the owner alleges that this is adequate and that no dustbins are necessary.

Subsection (3) referred to in the letter uses the words "such dustbins as may be necessary." The owner wishes to appeal and it seems under this part of the section that there is no right of appeal to the local magistrates on the ground either that they have given no undertaking as required by the section, or that the dustbins are not necessary. This seems remarkable in view of the provisions under the other subsections of s. 75.

In view of the joint effect of the two cases of firstly *National Housing Trust, Ltd.* v. *Chesterfield* [1948] 2 All E.R. 658; 112 J.P. 413 and secondly *Asher* v. *The Seaford Port Estates, Ltd.* [1950] 1 All E.R. 1018 is it not a proper conclusion that the landlord can transmit his burden of paying 5s. per annum per house to the tenant where each of the houses are small industrial dwellings all controlled by the Rent Restrictions Acts?

ALD.

Answer.

We doubt your suggestion that there is no appeal. A local authority cannot act under subs. (3) except "in lieu of requiring owners or occupiers to provide and maintain dustbins." These words seem to involve some anterior power to require bins, and thus to refer back to subs. (1). Your client could therefore appeal under subs. (1) making the point that the requirement of bins is not justified because, first, the established ashpits are adequate, and secondly, the burden of providing bins ought to be put upon the occupiers, if on anybody, so long as the ashpits remain adequate. Alternatively he could decline to take any notice of the inspector's intimation, unless and until the council pass a resolution, and could defend any proceedings under subs. (2). (There is something strange about this part of the story. If the council have not authorized the inspector's intimation, how can the inspector know that they "propose" to take certain action after one week? The "intimation" looks irregular, and indeed scarcely intended as a formal step.) This line would, however, not dispose of the real issue, because the council could start again in more regular fashion.

Upon the question actually put to us, we do not think the cited cases are in point. The demise of each house includes a properly built ashpit, part of the freehold. This the tenant still has, and can still use: he could, for example, put coal into it. We doubt whether (if and when the obligation to pay for the bins has been legally fixed upon the landlord) anything will have been "transferred" to him. It will be a new burden. We think his remedy is, as above indicated, to appeal and ask the justices to put the burden on the occupiers, if on anybody.

7.—Town and Country Planning Act, 1947—*Advertisements—Crown land.*

Section 87 of the Town and Country Planning Act, 1947, exempts "Crown land" from the operation of certain sections of the Act, which do not, however, include ss. 30 and 31 (control of advertisements). I cannot trace in the various control of advertisement regulations any exemption of Crown lands, and I am wondering what the exact legal position might be.

A. JANUS.

Answer.

Section 87 is not an exempting section: no exempting section is necessary—see below as to this. What s. 87 does is to put Crown land within certain provisions of the Act, although with several exceptions and savings. Section 30, mentioned in the query, is prevented by s. 87 (3) (*b*) from touching Crown buildings, notwithstanding that Part III in which that section occurs, applies (in part) by s. 87 (2) (*b*). By virtue of s. 87 (2) (*b*), the control of advertisements under s. 31 applies to interest in Crown land held otherwise than by or on behalf of the Crown: for example, a lessee from the Crown is caught by the regulations under s. 31. The reason why, as above stated, an exempting section for Crown interests is not necessary is the ordinary rule of law, that a statute does not bind the Crown except by express enactment.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

BOROUGH OF SOUTHALL

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with sound municipal experience for the appointment of Deputy Town Clerk. The salary will be £1,000 p.a., rising by annual increments of £50 to a maximum of £1,150 p.a. (subject to review on the publication of the Report of the appropriate Joint Negotiating Committee).

The appointment will be determinable by two month's notice on either side, will be subject to (*a*) the provisions of the Local Government Superannuation Act, 1937, (*b*) the Council's Conditions of Service, and (*c*) a satisfactory medical examination. The successful applicant must be a member of his appropriate Professional Organization or other recognized body.

Applications, endorsed "Deputy Town Clerk," stating age, qualifications, date of admission, together with particulars of past and present appointments, and specifying the names and adresses of three referees, must reach the undersigned by December 5, 1951. Canvassing will disqualify, and applicants must state whether to their knowledge they are related to any member or senior officer of the Council.

J. S. SYRETT,
Town Clerk.

Town Clerk's Offices,
Southall.

November 16, 1951.

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CUMBERLAND COUNTY COUNCIL

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office in Grade VI (£645/£710 per annum). Previous local government experience is desirable but not essential. Applications (no form issued), stating age, education, qualifications and full details of present appointment and past experience, together with the names of two referees, should reach me not later than Wednesday, December 12, 1951.

Canvassing Disqualifies.

G. N. C. SWIFT,
Clerk of the Peace and of the County Council.

The Courts,
Carlisle.

BOROUGH OF CREWE

Division of Nantwich

Appointment of Second Assistant Clerk in the Office of the Clerk to the Justices

APPLICATIONS are invited for the above appointment at a salary of £450 per annum.

Applicants should have considerable magisterial experience and be capable of issuing process, keeping accounts, preparing depositions and acting as Clerk of the Court.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age and experience and accompanied by copies of three recent testimonials, should be sent to the undersigned not later than December 22, 1951.

J. K. BAGGALEY,
Clerk to the Justices.

Justices' Clerk's Office,
35, Market Street,
Crewe.

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BOROUGH OF FARNWORTH

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors with sound knowledge and wide experience of law and local government for the appointment of Town Clerk at a salary of £1,150 per annum, rising by four increments of £50 to a maximum of £1,350, which is within the range recommended by the Joint Negotiating Committee.

The successful candidate will be required to devote the whole of his time to the statutory and other duties of his office. All fees and other emoluments, except personal fees arising from electoral registration or election work, must be paid by him into the rate fund.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and the passing of a medical examination, and terminable by three months' notice in writing by either party. The successful candidate will be expected to continue in membership of a recognized trade union.

Applications, on forms obtainable from me, together with copies of two recent testimonials and the names and adresses of two persons to whom reference as to ability may be made should be received not later than January 2, 1952.

H. L. SAGAR,
Acting Town Clerk.

Town Hall,
Farnworth,
Lancs.

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